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# REVISED STATUTES

OF

## ONTARIO, 1980

BEING A

REVISION AND CONSOLIDATION OF THE PUBLIC GENERAL  
ACTS OF THE LEGISLATURE OF ONTARIO, PUBLISHED  
UNDER THE AUTHORITY OF THE STATUTES  
REVISION ACT, 1979

**VOL. 3**

TORONTO

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# REVISED STATUTES OF ONTARIO, 1980

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## CHAPTER 142

## Escheats Act

## 1. In this Act,

Interpre-  
tation

(a) "heir" means a person beneficially entitled to property of an intestate;

(b) "property" means real property or personal property. R.S.O. 1970, c. 149, s. 1.

2.—(1) Where any property has become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs, or has become forfeited for any cause to the Crown, the Public Trustee may cause possession thereof to be taken in the name of the Crown, or, if possession is withheld, may cause an action to be brought for the recovery thereof, without an inquisition being first made.

(2) The proceedings in the action shall be in all respects similar to those in other actions for the recovery of property. R.S.O. 1970, c. 149, s. 2.

3. Notwithstanding section 2, where mining lands as defined in the *Mining Act* have become forfeited to the Crown, such mining lands shall be dealt with and disposed of as Crown lands in the manner provided in the *Mining Act*. R.S.O. 1970, c. 149, s. 3.

Saving as to  
mining  
landsR.S.O. 1980.  
c. 268

4. The Lieutenant Governor in Council may grant any property that has become the property of or has become forfeited to the Crown as mentioned in section 2, or any part thereof, or any interest therein, to any person for the purpose of transferring or restoring it to a person having a legal or moral claim upon the person to whom it had belonged, or of carrying into effect any disposition of it that such person may have contemplated, or of rewarding a person making discovery of the escheat or forfeiture, as to the Lieutenant Governor in Council seems proper. R.S.O. 1970, c. 149, s. 4.

Grant of  
forfeited  
property

5. Any such grant may be made without actual entry or taking possession of such property or inquisition being first made, and, if possession of the property is withheld,

Rights of  
grantee

the person to whom the grant is made may institute proceedings for the recovery thereof in a court of competent jurisdiction. R.S.O. 1970, c. 149, s. 5.

Release or  
waiver of  
forfeiture

**6.** Where any such forfeiture takes place, the Lieutenant Governor in Council may waive or release any right to which the Crown may thereby have become entitled so as to vest the property, either absolutely or otherwise, in the person who would have been entitled thereto but for the forfeiture, and the waiver or release may be either for valuable consideration or otherwise and may be upon such terms and conditions as to the Lieutenant Governor in Council seems proper. R.S.O. 1970, c. 149, s. 6.

Sale of  
real estate

**7.—(1)** Where possession of any real estate or an interest therein has been taken by the Public Trustee under this Act, the Lieutenant Governor in Council may direct the sale of such real estate at such price and upon such terms as is determined, and the Public Trustee is thereupon authorized to sell, in accordance with the directions of the order in council, the whole or a part of such real estate or an interest therein and to convey it to the purchaser.

Sale of  
personal  
estate

(2) Where possession of any personal estate has been taken by the Public Trustee under this Act, he may sell it at such price and upon such terms as to him seem proper. R.S.O. 1970, c. 149, s. 7.

## CHAPTER 143

## Estates Administration Act

## 1. In this Act,

Interpre-  
tation

- (a) "court" means the Supreme Court;
- (b) "judge" means a judge of the Supreme Court;
- (c) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (d) "mentally incompetent person" means a person,
  - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
  - (ii) who is suffering from such disorder of the mind,  
  
that he requires care, supervision and control for his protection and the protection of his property;
- (e) "personal representative" means an executor, an administrator, or an administrator with the will annexed. R.S.O. 1970, c. 129, s. 1.

2.—(1) All real and personal property that is vested in a person without a right in any other person to take by survivorship, on his death, whether testate or intestate and notwithstanding any testamentary disposition, devolves to and becomes vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto, and, subject to the payment of his debts and so far as such property is not disposed of by deed, will, contract or other effectual disposition, it shall be administered, dealt with and distributed as if it were personal property not so disposed of.

(2) This section applies to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem,  
where under  
appoint-  
ment

## Exceptions

(3) This section does not apply to estates tail or to the personal property, except chattels real, of a person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1970, c. 129, s. 2.

## Application of enactments as to probate, etc.

**3.** The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealing with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it is not lawful for some or one only of several joint personal representatives without the authority of a judge to sell or transfer real property. R.S.O. 1970, c. 129, s. 3.

## Real and personal property assimilated in matters of administration

**4.** Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section alters or affects as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1970, c. 129, s. 4.

## Payment of debts out of residuary estate

R.S.O. 1980, c. 488

**5.** Subject to section 32 of the *Succession Law Reform Act*, the real and personal property of a deceased person comprised in a residuary devise or bequest, except so far as a contrary intention appears from his will or any codicil thereto, is applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1970, c. 129, s. 5.

## How far personal representatives to be deemed "heirs"

**6.** When any part of the real property of a deceased person vests in his personal representative under this Act, such personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, in respect of such part, unless a contrary intention appears, but nothing in this section affects the

beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument. R.S.O. 1970, c. 129, s. 6.

**7.** Where an estate or interest of inheritance in real property is vested on a trust or by way of mortgage in a person solely, it, on his death, notwithstanding any testamentary disposition, devolves to and becomes vested in his executor or administrator in like manner as if it were personal estate vesting in him, and accordingly all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with it belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if it were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1970, c. 129, s. 7.

Trust estates  
and interests  
of mort-  
gagees

**8.**—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property, it is sufficient for the purposes of an action for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under Part II of the *Succession Law Reform Act*, to such property or the proceeds thereof be made defendant to such action, and it is not necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it is otherwise ordered by the court in which the action is brought, but, if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor, he shall be made a party to the action.

Who to be  
defendants  
in action for  
foreclosure  
where no  
personal  
representa-  
tive of  
mortgagor

R.S.O. 1980,  
c. 488

(2) In subsection (1), "mortgagor" includes the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1970, c. 129, s. 9.

Interpre-  
tation

**9.**—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 17 by the personal representative within three years after the death of the deceased is, subject to the *Land Titles Act* in the case of land registered under that Act and subject to subsections 48 (3) and (5) of the *Registry Act*, and subject as hereinafter provided, at the expir-

Vesting  
of real  
estate not  
disposed of  
within  
3 years

R.S.O. 1980,  
cc. 230, 445

ation of that period, whether probate or letters of administration have or have not been taken, thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has registered, in the proper land registry office, a caution in Form 1 under his hand, and, if a caution is so registered, the real property mentioned therein does not so vest for three years from the time of the registration of the caution or of the last caution if more than one was registered.

**Verification** (2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by the *Registry Act* or the *Land Titles Act*, as the case may be.

R.S.O. 1980,  
cc. 445, 230

**Effect** (3) A caution registered or reregistered under this section or under section 11 is effectual only as to the real property mentioned in the caution.

**Withdrawal of caution** (4) The personal representative, before the expiration of the three years, may register a certificate in Form 2 withdrawing the caution in respect of the real property described in the certificate, and, upon registration of the certificate, the real property described therein shall be treated as if the caution had expired.

**Verification** (5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness in Form 3.

**Renewal of caution** (6) Before a caution expires it may be reregistered and so on from time to time as long as the personal representative considers it necessary, and every caution continues in force for three years from the time of its registration or reregistration. R.S.O. 1970, c. 129, s. 14.

**Ordinary rights of executors, etc., preserved** **10.** Nothing in section 9 derogates from any right possessed by an executor or administrator with the will annexed under a will or under the *Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1970, c. 129, s. 15.

R.S.O. 1980,  
c. 512

**Registration of caution after three years from death of testator** **11.—(1)** Where a personal representative has not registered a caution within the proper time after the death of the deceased or has not reregistered a caution within the proper time, he may register or reregister the caution, as the case may be, provided he registers therewith,

- (a) the affidavit of execution ; and
- (b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased, mentioned in the caution or part thereof, under his powers and in fulfilment of his duties, and, as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and, if so, which of them, are minors or mentally incompetent persons ; and
- (c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and mentally incompetent person whose property or interest would be affected, and an affidavit verifying such consent ; or
- (d) in the absence and in lieu of such consent, an order of a judge of the Supreme Court or of the county or district court of the county or district in which the property or a part of it is situate, or the certificate of the Official Guardian authorizing the caution to be registered or reregistered, which order or certificate the judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or reregistered, and the order or certificate to be registered does not require verification and shall not be rendered null by any defect of form or otherwise.

(2) This section extends to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered.

Application  
of section

(3) Where a caution is registered or reregistered under this section, it has the same effect as a caution registered within the proper time after the death of the deceased and of vesting or revesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through a person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or of a person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or reregistered a caution, if his real property is afterwards sold by the personal representative.

Effect of  
such regis-  
tration

Signature  
to caution

(4) Where there are two or more personal representatives, it is sufficient if a caution or the affidavit mentioned in clause (1) (b) is signed or made by one of such personal representatives. R.S.O. 1970, c. 129, s. 16.

Effect of  
repealing  
enactment

**12.** Where a caution has been registered or reregistered under any enactment repealed and not re-enacted by this Act and is still in force, such caution has the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 9. R.S.O. 1970, c. 129, s. 17.

Vacating  
caution

**13.** Any person beneficially entitled to any real property affected by the registration or reregistration of a caution may apply to a judge to vacate the registration or reregistration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that the registration or reregistration be vacated as to such property, and every caution, the registration or reregistration of which is so vacated, thereafter ceases to operate. R.S.O. 1970, c. 129, s. 18.

Land  
in two or  
more  
persons

**14.** Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the will of the deceased. R.S.O. 1970, c. 129, s. 19.

Sales where  
minors  
interested

**15.—(1)** Where a minor is interested in real property that but for this Act would not devolve on the personal representative, no sale or conveyance is valid under this Act without the written approval of the Official Guardian; or, in the absence of such consent or approval, without an order of a judge.

Local  
guardians

(2) A judge may appoint the local judge of a county or district or the local master therein as local guardian of minors in such county or district during the pleasure of the judge, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian are subject to such rules as the court may make in regard to their authority and duties under this Act. R.S.O. 1970, c. 129, s. 20.

Power of  
personal  
representa-  
tive over  
real  
property

**16.** Except as otherwise provided in this Act, the personal representative of a deceased person has power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but

subject to the like rights, equities and obligations, as if the real property were personal property vested in him. R.S.O. 1970, c. 129, s. 21.

**17.—(1)** The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case is it necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only.

Powers of executors and administrators as to selling and conveying real estate

(2) Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Official Guardian acting on behalf of a minor or mentally incompetent person, no sale of any such real property made for the purpose of distribution only is valid as respects any person beneficially entitled thereto unless he concurs therein, but, where a mentally incompetent person is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, the Official Guardian may, upon proof satisfactory to him that the sale is in the interest and to the advantage of the estate of the deceased person and the persons beneficially interested therein, approve the sale on behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian is valid and binding upon such mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian has the same powers and duties as he has in the case of minors, but in any case a judge may dispense with the concurrence of the persons beneficially entitled or any or either of them.

Concurrence of heirs and devisees

(3) The personal representative has power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of minors or mentally incompetent persons, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

Powers of personal representative as to dividing estate among persons entitled

(4) Where a person beneficially entitled is a patient in a psychiatric facility under the *Mental Health Act* and the Public Trustee is committee of his estate, the concurrence and

Concurrence where person is a patient in a psychiatric facility  
R.S.O. 1980, c. 262

approval required by subsections (2) and (3) may be given by the Public Trustee on behalf of such patient.

Distribution  
by order  
within  
three years  
from death

(5) Upon the application of the personal representative or of any person beneficially entitled, the court may, before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Exercise of  
power of  
division  
without  
concur-  
rence

(6) The power of division conferred by subsection (3) may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection (2).

Sections 16  
and 17  
not to  
apply to ad-  
ministrators  
of personal  
estate only

(7) Section 16 and this section do not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and do not derogate from any right possessed by a personal representative independent of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will except with the approval of a judge.

Conveyance  
by personal  
representa-  
tive without  
an order

(8) The powers of a personal representative under subsection (2), (3) or (6) have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of a judge, provided that,

(a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value, but, in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, his assignee or successor to enforce the claim and a *lis pendens* or a caution has, before such expiry, been registered against the property; and that

(b) although such liability has applied and shall apply as aforesaid in respect of real property so con-

veyed, divided or distributed, any such purchaser, in good faith and for value, shall be deemed to have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative; and that

- (c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, subsection 20 (2) and section 22 apply as if such real property had become vested in the person beneficially entitled thereto under section 9. R.S.O. 1970, c. 129, s. 22.

**18.** The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative that has been made without the written approval of the Official Guardian, where such approval is required, is a confirmation of the sale as to him. R.S.O. 1970, c. 129, s. 23.

Effect of accepting share of purchase money

**19.** A person purchasing in good faith and for value real property from a personal representative in a manner authorized by this Act is entitled to hold it freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and is not bound to see to the application of the purchase money. R.S.O. 1970, c. 129, s. 24.

Protection of purchasers from personal representatives

**20.—(1)** A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of a judge, is entitled to hold it freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, but nothing in this section affects the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

Protection of purchasers from beneficiary

**(2)** Real property that becomes vested in a person beneficially entitled thereto under section 9 continues to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained

Extent to which real property remains liable to debts and personal liability of beneficiary

vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he is personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1970, c. 129, s. 25.

Powers of  
personal rep-  
resentative  
as to leasing  
and mort-  
gaging

**21.**—(1) The powers of a personal representative under this Act include,

- (a) power to lease from year to year while the real property remains vested in him;
- (b) power, with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein including the Official Guardian acting on behalf of a minor or mentally incompetent person, to lease for a longer term;
- (c) power to mortgage for the payment of debts.

Approval of  
Official  
Guardian

(2) The written approval of the Official Guardian to mortgaging is required where it would be required if the real property were being sold. R.S.O. 1970, c. 129, s. 26.

Rights of  
purchaser in  
good faith  
against  
claims of  
creditors

**22.**—(1) A purchaser in good faith and for value of real property of a deceased owner that has become vested under section 9 in a person beneficially entitled thereto is entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Liability of  
personal  
representa-  
tive

(2) Nothing in subsection (1) affects the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1970, c. 129, s. 27.

Search  
for  
children  
born  
outside  
marriage

**23.**—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability  
of  
personal  
representa-  
tive

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

- (a) he makes the inquiries referred to in subsection (1) and the entitlement of the person entitled was not

known to the personal representative at the time of the distribution; and

- (b) he makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Nothing in this section prejudices the right of any person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage. 1977, c. 40, s. 50 (2).

**24.**—(1) If a child of an intestate has been advanced by the intestate by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of the intestate to be distributed under this Act, and if the advancement is equal to or greater than the amount of the share that the child would be entitled to receive of the real and personal property of the intestate, as so reckoned, then the child and his descendants shall be excluded from any share in the real and personal property of the intestate.

(2) If the advancement is less than the share, the child and his descendants are entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in the real and personal property and advancement to be equal, as nearly as can be estimated.

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing, otherwise the value shall be estimated according to the value of the property when given.

(4) The maintaining or educating of, or the giving of money to, a child without a view to a portion or settle-

Saving rights

Cases of children advanced by settlement, etc.

If advancement is not equal

Value of property advanced, how estimated

Education, etc., not advancement

ment in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1970, c. 129, s. 29.

Distribution  
not to be  
made for  
one year  
R.S.O. 1980,  
c. 512

**25.** Subject to section 53 of the *Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share is allotted shall, if any debt owing by the intestate is afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1970, c. 129, s. 33.

Rules of  
procedure

**26.** Rules regulating the practice and procedure to be followed in all proceedings under this Act and a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings may be made by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1970, c. 129, s. 34.

Appointment  
of deputy  
Official  
Guardian  
*pro tem*

**27.** The Lieutenant Governor in Council may appoint a deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1970, c. 129, s. 35.

Affidavits

**28.** Affidavits may be used in proceedings taken under this Act. R.S.O. 1970, c. 129, s. 36.

## FORM 1

*Estates Administration Act**(Section 9 (1) )*

## CAUTION

I, ....., executor of (or administrator with the will annexed of, or administrator of) ....., who died on or about the.....day of....., 19....., certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said.....as hereinafter described, or part thereof, and of this all persons concerned are hereby required to take notice.

The real property to be affected by this caution is described as follows:  
*(Describe the real property in a manner sufficient for registration under the Land Titles Act or the Registry Act, as the case may be.)*

R.S.O. 1970, c. 129, Form 1.

## FORM 2

*Estates Administration Act**(Section 9 (4) )*

## CERTIFICATE OF WITHDRAWAL

I, ....., executor (or administrator) of ....., hereby withdraw the caution heretofore registered with respect to the real property hereinafter described: *(Describe the real property in a manner sufficient for registration under the Land Titles Act or the Registry Act, as the case may be.)*

R.S.O. 1970, c. 129, Form 2.

## FORM 3

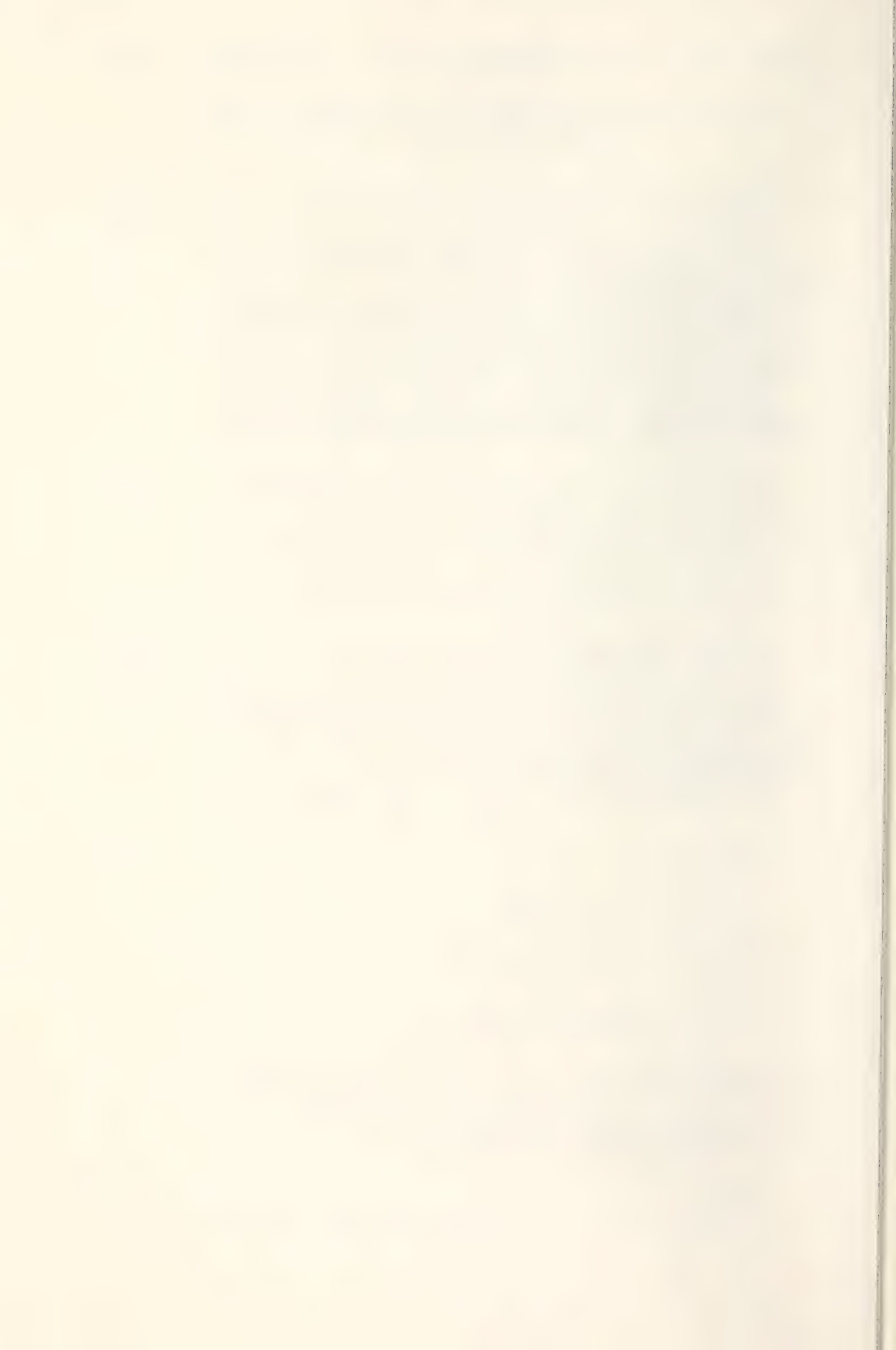
*Estates Administration Act**(Section 9 (5) )*

## AFFIDAVIT OF WITNESS

I, ....., of, etc., make oath and say: that I am well acquainted with .....named in the above certificate; that I was present and did see the said certificate signed by the said.....; that I am a subscribing witness to the said certificate, and that I believe the said..... is the person who registered the caution referred to in the said certificate.

Sworn, etc.

R.S.O. 1970, c. 129, Form 3.



## CHAPTER 144

## Estreats Act

1.—(1) Unless otherwise provided, all fines and forfeited recognizances, the disposal of which is within the power of the Province of Ontario, set, imposed, lost or forfeited, by or before the Supreme Court or a court of general sessions of the peace, shall, upon the adjournment of such court, be entered and extracted on a roll by the registrar or clerk of the peace, as the case may be, or by some other person under the direction of a judge, which roll shall be made in duplicate and signed by the registrar or clerk or by the judge. <sup>Entry of fines, etc.</sup>

(2) The person by whom the roll is prepared shall, at the foot thereof, certify in the following form: <sup>Certificate of clerk</sup>

I, *A. B.*, (*describing his office*), do certify that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, and forfeited recognizances, which were set, imposed, lost or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are inserted in such roll; and that in the roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful error, omission, misnomer, or defect whatever. *A.B.*

R.S.O. 1970, c. 150, s. 1.

2.—(1) Subject to section 8, as soon as the roll is prepared, one copy shall, in the Supreme Court, be transmitted to the office of the Registrar of the Supreme Court at Toronto, and in the general sessions shall remain deposited in the office of the clerk of the peace, and in both cases the other copy, with a writ of execution and capias in Form 1, shall be transmitted to the sheriff of the county or district in and for which such court was held. <sup>Transmission of copy of roll</sup>

(2) Where the writ is intended to be executed in any other county or district, a certified copy of the roll, with a concurrent writ of execution and capias in Form 1, shall be transmitted to the sheriff of such county or district. <sup>Idem</sup>

(3) A writ, if unexecuted, remains in force for three years and no longer, unless renewed in the manner provided in the case of other writs of execution. <sup>Duration of writ</sup>

Alias

(4) Where a recognizance is estreated and has not been discharged or satisfied, the court may order the issue of a new or alias writ of execution and *capias*, notwithstanding that more than three years have elapsed since the issue of the original writ. R.S.O. 1970, c. 150, s. 2.

Preparation of roll and issue of execution before adjournment of court

**3.**—(1) At any time before the adjournment of the court, the registrar or clerk shall at the request of the Crown attorney prepare and certify a roll dealing with any one or more forfeited recognizances or fines and issue a writ of execution and *capias* in respect thereof, and such writ of execution and *capias* may be immediately placed in the hands of the sheriff for execution.

Note to be made on roll

(2) In any such case, the forfeiture or fine shall be mentioned in the roll and certificate required to be made up upon the adjournment of the court with an annotation of the issue of the certificate and execution, and the execution then to be issued does not apply thereto. R.S.O. 1970, c. 150, s. 3.

Mode of proceeding to levy fine, etc.

**4.** The sheriff shall proceed to the immediate levying and recovering of such fines, issues, *amerciaments* and forfeited recognizances on the goods and chattels, lands and tenements of the persons named in the roll, or to the taking into custody of the bodies of such persons in case sufficient goods and chattels, lands or tenements cannot be found whereof the sums required can be made, and every person so taken shall be lodged in the correctional institution in the county or district until satisfaction is made or until the court, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until the order has been fully complied with. R.S.O. 1970, c. 150, s. 4.

Estreat of recognizances

**5.**—(1) Where a person bound by a recognizance for his appearance, or for whose appearance any other person has become so bound, does not appear at the time and place required or during the time the judge of the county or district judges' criminal court or provincial judge or justice of the peace has appointed, according to the terms of the recognizance, the judge or justice shall within forty-eight hours after such failure to appear cause a record of the recognizance to be drawn up and shall sign it and return it to the clerk of the peace for the county or district with a certificate on the back thereof signed by the judge or justice stating that the person charged has not complied with the obligation contained in the recognizance.

Record of estreats at sessions

(2) The clerk of the peace shall make a like record of estreat of every such recognizance as in the case of other recognizances forfeited at the court of general sessions of the peace.

(3) The other provisions of this Act apply to every such recognizance. Application of other provisions

(4) In the case of the forfeiture of a recognizance given by or on behalf of a person for his appearance before a provincial judge or justice of the peace or before the judge of the county or district judges' criminal court or by or on behalf of a person appealing from a conviction or order made in the first instance or on appeal, if the court of general sessions of the peace is not in session at the time of such forfeiture, the clerk of the peace shall prepare and certify a roll setting out the forfeited recognizance and lay it before a judge of the county court in chambers, and the judge may thereupon by memorandum upon the roll order the estreating of such recognizance, and the clerk of the peace shall thereupon proceed as in other cases provided for by this Act. R.S.O. 1970, c. 150, s. 5. When recognizance forfeited while court not in session

6. Where a person bound by recognizance for his appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence in the case of an offence for the commission of which a fine or penalty is imposed that the Province of Ontario is entitled to receive makes default, the officer of the court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person or his surety was so bound, together with the residence, trade, profession or calling of every such person and surety, and shall in the list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of his non-appearance, the ends of justice have been defeated or delayed. R.S.O. 1970, c. 150, s. 6. Report by officer of the court

7. Every officer before a recognizance is estreated shall lay the list before a judge of the court, who shall examine the list and make such order touching the estreating or putting in process the recognizance as appears just, and no officer of the court shall estreat or put in process a recognizance without the written order of the judge before whom the list has been laid. R.S.O. 1970, c. 150, s. 7. Estreat of recognizances, etc.

8.—(1) Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence, in every case of default whereby a recognizance has become forfeited, if the cause of absence is made known to the court, the court, on consideration of the cause and considering also whether by the non-appearance of such Forbearance from estreat

person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated, and with respect to all recognizances estreated and all fines imposed by any court for the non-attendance of a juror or constable, or of a public officer bound to attend at the court, if it appears to the satisfaction of the judge who presided thereat that the absence of the person for whose appearance a recognizance was entered into, or that the absence of a person fined for non-attendance was owing to circumstances that rendered his absence justifiable, the judge may make an order directing that the sum forfeited upon the estreated recognizance or the fine imposed not be levied.

Forbearance  
from levying  
fines, etc.

(2) The clerk before sending to the sheriff the roll, with the writ of execution and *capias*, shall submit the same to the judge for his revision, and the judge may make a minute on the roll and writ of any forfeited recognizances and fines that he thinks fit to direct not to be levied, and the sheriff shall observed the direction of the minute, and shall accordingly forbear to levy the forfeited recognizance or fine. R.S.O. 1970, c. 150, s. 8.

Procedure  
where lands  
are seized

**9.** Where the sheriff takes land or tenements in execution, his duties and the practice and procedure as to the sale shall be the same as in other cases of execution against lands. R.S.O. 1970, c. 150, s. 9.

Conditions  
upon which  
a party in  
custody of  
the sheriff  
may be  
released

**10.** If a person on whose goods and chattels a sheriff is authorized to levy a forfeited recognizance gives security to the sheriff for his appearance in the court into which the writ is returnable within thirty days after the giving of the security, or so soon thereafter as the court sits, then and there to abide the decision of the court, and also to pay the forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such person shall be discharged out of custody, and, if he does not appear in pursuance of his undertaking, the court may forthwith issue a writ of execution and *capias* against the surety or sureties of the person so bound. R.S.O. 1970, c. 150, s. 10.

Discharge of  
forfeited  
recogniz-  
ances, etc.

**11.** The court into which a writ of execution and *capias* is returnable may inquire into the circumstances of the case and may order the discharge of the whole of the forfeited recognizance, or sum paid or to be paid in lieu of satisfaction thereof, and may make such order thereon as to the court appears just, and the order is a discharge to the sheriff or to the party, according to the circumstances of the case. R.S.O. 1970, c. 150, s. 11.

**12.** The sheriff to whom a writ is directed shall with his return state on the back of the roll attached to the writ what has been done in the execution thereof, and the return shall be filed in the proper office of the court into which it is made. R.S.O. 1970, c. 150, s. 12.

Manner of  
return by  
sheriff, etc.

**13.** A copy of the roll and return, certified by the clerk of the peace or by the local registrar of the Supreme Court, shall be forthwith transmitted to the Inspector of Legal Offices, with a minute thereon of any of the sums therein mentioned that have been remitted by order of the court, in whole or in part, or directed to be forborne under this Act. R.S.O. 1970, c. 150, s. 13.

Certified  
return to  
Inspector of  
Legal Offices

**14.** The sheriff shall, without delay, pay over all money collected by him to the Treasurer of Ontario or other officer or person entitled to receive it. R.S.O. 1970, c. 150, s. 14.

Payment to  
Treasurer  
of Ontario

**15.** Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules regulating the practice and procedure for the estreating of recognizances in the Supreme Court or in the court of general sessions of the peace. R.S.O. 1970, c. 150, s. 15.

Rules

**16.**—(1) This Act applies to any bond, recognizance or other security furnished under any statute of Ontario by or on behalf of any person for his appearance before a provincial judge or a justice or for the prosecution of any appeal in any matter or case punishable under the *Provincial Offences Act* or in which an appeal lies from a conviction or order made by a judge or justice.

Recogniz-  
ances to  
prosecute  
appeal from  
convictions,  
etc.

R.S.O. 1980,  
c. 400

(2) Rules may be made for regulating the practice upon the estreating of any such bond, recognizance or other security by the same authority and in the same manner as under section 15. R.S.O. 1970, c. 150, s. 16.

Rules

## FORM 1

*Estreats Act*

## (Section 2)

## WRIT OF EXECUTION AND CAPIAS

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom,  
Canada and Her other Realms and Territories Queen, Head of the  
Commonwealth, Defender of the Faith.

To the Sheriff of....., Greeting:

You are hereby commanded to levy of the goods and chattels lands and tenements of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged as therein is specified; and if any of the said several debts cannot be levied by reason that no goods or chattels, lands or tenements can be found belonging to the said persons respectively, then and in all such cases, you are to take the bodies of such persons and keep them safely in the correctional institution in your county (*or district*), there to abide the judgment of Our Supreme Court (*or Court of General Sessions of the Peace, as the case may be*) upon any matter to be shown by them respectively, or otherwise to remain in your custody as aforesaid until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said court within thirty days after the giving of the security, or so soon thereafter as the court sits, for which you will be held answerable; and what you do in the premises make appear before Us in Our Supreme Court at Toronto (*or at the next Court of General Sessions of the Peace for the county (or district) of.....*) immediately after the execution hereof and have then and there this writ.

Witness my hand.....this.....  
day of....., 19.....

.....  
A. B.

Registrar (*or Clerk of the Peace or as the case may be*)  
for the County of.....

R.S.O. 1970, c. 150, Form 1.

## CHAPTER 145

## Evidence Act

## 1. In this Act,

Interpre-  
tation

(a) "action" includes an issue, matter, arbitration, reference, investigation, inquiry, a prosecution for an offence committed against a statute of Ontario or against a by-law or regulation made under any such statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario;

(b) "court" includes a judge, arbitrator, umpire, commissioner, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence. R.S.O. 1970, c. 151, s. 1.

2. This Act applies to all actions and other matters whatsoever respecting which the Legislature has jurisdiction. R.S.O. 1970, c. 151, s. 2.

Application  
of Act

3.—(1) Where by any Act of the Legislature or order of the Assembly an oath is authorized or directed to be administered, the oath may be administered by any person authorized to take affidavits in Ontario.

Administra-  
tion of  
oaths

(2) Every court has power to administer or cause to be administered an oath to every witness who is called to give evidence before the court. R.S.O. 1970, c. 151, s. 3.

by courts

4. Where an oath or declaration is directed to be made before a person, he has power and authority to administer it and to certify to its having been made. R.S.O. 1970, c. 151, s. 4.

Certification

5.—(1) Notwithstanding any Act, regulation or the rules of court, a stenographic reporter, shorthand writer, stenographer or other person who is authorized to record evidence and proceedings in an action in a court or in a proceeding authorized by or under any Act may record the evidence and the proceedings by any form of shorthand or by any device for recording sound of a type approved by the Attorney General.

Recording  
of evidence.  
etc.

Admissibility  
of  
transcripts

(2) Notwithstanding any Act, regulation or the rules of court, a transcript of the whole or a part of any evidence that has or proceedings that have been recorded in accordance with subsection (1) and that has or have been certified in accordance with the Act, regulation or rule of court, if any, applicable thereto and that is otherwise admissible by law is admissible in evidence whether or not the witness or any of the parties to the action or proceeding has approved the method used to record the evidence and the proceedings and whether or not he has read or signed the transcript. R.S.O. 1970, c. 151, s. 5; 1972, c. 1, s. 9 (7).

Witnesses,  
not in-  
capacitated  
by crime,  
etc.

**6.** No person offered as a witness in an action shall be excluded from giving evidence by reason of any alleged incapacity from crime or interest. R.S.O. 1970, c. 151, s. 6.

Admissi-  
bility not-  
withstanding  
interest or  
crime

**7.** Every person offered as a witness shall be admitted to give evidence notwithstanding that he has an interest in the matter in question or in the event of the action and notwithstanding that he has been previously convicted of a crime or offence. R.S.O. 1970, c. 151, s. 7.

Evidence  
of parties

**8.**—(1) The parties to an action and the persons on whose behalf it is brought, instituted, opposed or defended are, except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of themselves or of any of the parties, and the husbands and wives of such parties and persons are, except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of any of the parties.

Evidence of  
husband  
and wife

(2) Without limiting the generality of subsection (1), a husband or a wife may in an action give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage. R.S.O. 1970, c. 151, s. 8.

Witness not  
excused from  
answering  
questions  
tending to  
criminate

**9.**—(1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.

Answer not  
to be used  
in evidence  
against him

(2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection (1) and if, but for this section or any Act of the Parliament of Canada, he would therefore be excused from answering such question, then, although he is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding

or in any proceeding under any Act of the Legislature.  
R.S.O. 1970, c. 151, s. 9.

**10.** The parties to a proceeding instituted in consequence of adultery and the husbands and wives of such parties are competent to give evidence in such proceedings, but no witness in any such proceeding, whether a party to the suit or not, is liable to be asked or bound to answer any question tending to show that he or she is guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery. R.S.O. 1970, c. 151, s. 10.

Evidence in proceedings in consequence of adultery

**11.** A husband is not compellable to disclose any communication made to him by his wife during the marriage, nor is a wife compellable to disclose any communication made to her by her husband during the marriage. R.S.O. 1970, c. 151, s. 11.

Communications made during marriage

**12.** Where it is intended by a party to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding. R.S.O. 1970, c. 151, s. 12.

Expert evidence

**13.** In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 14.

Actions by or against heirs, etc.

**14.** In an action by or against a mentally incompetent person so found, or a patient in a psychiatric facility, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence, unless such evidence is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 15.

Actions by or against persons under disability

**15.** An examination for discovery, or any part thereof, of an officer or servant of a corporation made under the rules of court may be used as evidence at the trial by any party adverse in interest to the corporation, subject to such protection to the corporation as the rules of court provide. R.S.O. 1970, c. 151, s. 16.

Use of examination for discovery of officer or servant of corporation at trial

Mode of  
administer-  
ing oath

**16.** Where an oath may be lawfully taken, it may be administered to a person while such person holds in his hand a copy of the Old or New Testament without requiring him to kiss the same, or, when he objects to being sworn in this manner or declares that the oath so administered is not binding upon his conscience, then in such manner and form and with such ceremonies as he declares to be binding. R.S.O. 1970, c. 151, s. 17.

Affirmation  
in lieu  
of oath

**17.—**(1) Where a person objects to being sworn from conscientious scruples, or on the ground of his religious belief, or on the ground that the taking of an oath would have no binding effect on his conscience, he may, in lieu of taking an oath, make an affirmation or declaration that is of the same force and effect as if he had taken an oath in the usual form.

Certifying  
affirmation

(2) Where the evidence is in the form of an affidavit or written deposition, the person before whom it is taken shall certify that the deponent satisfied him that he was a person entitled to affirm. R.S.O. 1970, c. 151, s. 18.

Evidence  
of child

**18.—**(1) In any legal proceeding where a child of tender years is offered as a witness and the child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of the child may be received though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

Corrobor-  
ation

(2) No case shall be decided upon such evidence unless it is corroborated by some other material evidence. R.S.O. 1970, c. 151, s. 19.

Attendance  
of witnesses

**19.** A witness served in due time with a subpoena issued out of a court in Ontario, and paid his proper witness fees and conduct money, who makes default in obeying such subpoena, without any lawful and reasonable impediment, in addition to any penalty he may incur as for a contempt of court, is liable to an action on the part of the person by whom, or on whose behalf, he has been subpoenaed for any damage that such person may sustain or be put to by reason of such default. R.S.O. 1970, c. 151, s. 20.

*[The following provisions were enacted by the Province of Canada as part of Chapter 9 of 1854. They were carried into the Consolidated Statutes of Canada, 1859 as sections 4-11 and 13 of Chapter 79. They have appeared in their present form in successive revisions since Confederation. See Rideout vs Rideout (1956) O.W.N. 644.]*

4. If in any action or suit depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it appears to the Court, or when not sitting, it appears to any Judge of the Court that it is proper to compel the personal attendance at any trial or *enquête* or examination of witnesses, of any person who may not be within the jurisdiction of the Court in which the action or suit is pending, the Court or Judge, in their or his discretion, may order that a writ called a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue in special form, commanding such person to attend as a witness at such trial or *enquête* or examination of witnesses wherever he may be in Canada.

Courts may  
issue sub-  
poenas to  
any part of  
Canada

5. The service of any such writ or process in any part of Canada, shall be valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it has issued, according to the practice of such Court.

Service  
thereof in  
any part of  
Canada to  
be good

6. No such writ shall be issued in any case in which an action is pending for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

When not to  
be issued

7. Every such writ shall have at the foot, or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Writs to be  
specially  
noted

8. In case any person so served does not appear according to the exigency of such writ or process, the Court out of which the same issued, may, upon proof made of the service thereof, and of such default to the satisfaction of such Court, transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, being out of the jurisdiction of the Court transmitting such certificate, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court.

Conse-  
quences of  
disobedience

9. No such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem* and per mile allowed to witnesses by the law and practice of the Superior Court of Law within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence and of returning from giving evidence, had been tendered to such person at the time when the writ of subpoena, or other similar process was served upon him.

If expenses  
paid or  
tendered

10. The service of such writs of subpoena or other similar process, in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service has been made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person who served the same.

How service  
proved

11. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, so orders.

Costs of  
attendance  
provided for

Power to  
issue com-  
missions to  
examine  
witnesses  
preserved

13. Nothing herein contained shall affect the power of any Court to issue a commission for the examination of witnesses out of its jurisdiction, nor affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court.

Examination  
of witnesses,  
proof of con-  
tradictory  
written  
statements

20. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him, but, if it is intended to contradict him by the writing, his attention shall, before such contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of so contradicting him, and the judge or other person presiding at any time during the trial or proceeding may require the production of the writing for his inspection, and may thereupon make such use of it for the purposes of the trial or proceeding as he thinks fit. R.S.O. 1970, c. 151, s. 21.

Proof of con-  
tradictory  
oral  
statements

21. If a witness upon cross-examination as to a former statement made by him relative to the matter in question and inconsistent with his present testimony does not distinctly admit that he did make such statement, proof may be given that he did in fact make it, but before such proof is given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. R.S.O. 1970, c. 151, s. 22.

Proof of  
previous  
conviction of  
a witness

22.—(1) A witness may be asked whether he has been convicted of any crime, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved, and a certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the court at which the offender was convicted, or by the deputy of the officer, is, upon proof of the identity of the witness as such convict, sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

Fee

(2) For such certificate, a fee of \$1 and no more may be demanded or taken. R.S.O. 1970, c. 151, s. 23.

How far a  
party may  
discredit his  
own witness

23. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may contradict him by other evidence, or, if the witness in the opinion of the judge or other person presiding proves adverse, such party may, by leave of the judge or other person presiding, prove that the witness made at some other time a statement inconsistent with his present testi-

mony, but before such last-mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R.S.O. 1970, c. 151, s. 24.

**24.** Letters patent under the Great Seal of the United Kingdom, or of any other of Her Majesty's dominions, may be proved by the production of an exemplification thereof, or of the enrolment thereof, under the Great Seal under which such letters patent were issued, and such exemplification has the like force and effect for all purposes as the letters patent thereby exemplified or enrolled, as well against Her Majesty as against all other persons whomsoever. R.S.O. 1970, c. 151, s. 25.

Letters  
patent

**25.**—(1) Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of the United Kingdom, or of the Imperial Government or by or under the authority of the government or of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within the Queen's dominions, shall be admitted in evidence to prove the contents thereof. R.S.O. 1970, c. 151, s. 26.

Copies of  
statutes, etc.

(2) Copies of the statutes of Ontario that are translated into the French language and that purport to be published by the Ministry of the Attorney General and printed by the Queen's Printer shall be admitted in evidence to prove the contents thereof but, in the event of a conflict between the version published under the *Statutes Act* and the French language translation, the version published under the *Statutes Act* shall prevail. 1979, c. 48, s. 1.

Copies of  
French  
translation

R.S.O. 1980,  
c. 483

**26.** *Prima facie* evidence of a proclamation, order, regulation or appointment to office made or issued,

Proclama-  
tions, orders,  
etc.

- (a) by the Governor General or the Governor General in Council, or other chief executive officer or administrator of the Government of Canada; or
- (b) by or under the authority of a minister or head of a department of the Government of Canada or of a provincial or territorial government in Canada; or
- (c) by a Lieutenant Governor or Lieutenant Governor in Council or other chief executive officer or administrator of Ontario or of any other province or territory in Canada,

may be given by the production of,

- (d) a copy of the *Canada Gazette* or of the official gazette for a province or territory purporting to contain a notice of such proclamation, order, regulation or appointment; or
- (e) a copy of such proclamation, order, regulation or appointment purporting to be printed by the Queen's Printer or by the government printer for the province or territory; or
- (f) a copy of or extract from such proclamation, order, regulation or appointment purporting to be certified to be a true copy by such minister or head of a department or by the clerk, or assistant or acting clerk of the executive council or by the head of a department of the Government of Canada or of a provincial or territorial government or by his deputy or acting deputy. R.S.O. 1970, c. 151, s. 27.

Orders  
signed by  
Secretary  
of State or  
Provincial  
Secretary

**27.** An order in writing purporting to be signed by the Secretary of State of Canada and to be written by command of the Governor General shall be received in evidence as the order of the Governor General and an order in writing purporting to be signed by a member of the Executive Council and to be written by command of the Lieutenant Governor shall be received in evidence as the order of the Lieutenant Governor. R.S.O. 1970, c. 151, s. 28, *revised*.

Notices in  
*Gazette*

**28.** Copies of proclamations and of official and other documents, notices and advertisements printed in the *Canada Gazette*, or in *The Ontario Gazette*, or in the official gazette of any province or territory in Canada are *prima facie* evidence of the originals and of the contents thereof. R.S.O. 1970, c. 151, s. 29.

Public  
or official  
documents

**29.** Where the original record could be received in evidence, a copy of an official or public document in Ontario, purporting to be certified under the hand of the proper officer, or the person in whose custody such official or public document is placed, or of a document, by-law, rule, regulation or proceeding, or of an entry in a register or other book of a corporation, created by charter or statute in Ontario, purporting to be certified under the seal of the corporation and the hand of the presiding officer or secretary thereof, is receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. R.S.O. 1970, c. 151, s. 30.

Privilege in  
case of  
official  
documents

**30.** Where a document is in the official possession, custody or power of a member of the Executive Council, or of the head of a ministry of the public service of Ontario, if the

deputy head or other officer of the ministry has the document in his personal possession, and is called as a witness, he is entitled, acting herein by the direction and on behalf of such member of the Executive Council or head of the ministry, to object to producing the document on the ground that it is privileged, and such objection may be taken by him in the same manner, and has the same effect, as if such member of the Executive Council or head of the ministry were personally present and made the objection. R.S.O. 1970, c. 151, s. 31; 1972, c.1, s. 2.

**31.** A copy of an entry in a book of account kept in a department of the Government of Canada or of Ontario shall be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of the department that such book was, at the time of the making of the entry, one of the ordinary books kept in the department, that the entry was apparently, and as the deponent believes, made in the usual and ordinary course of business of the department, and that such copy is a true copy thereof. R.S.O. 1970, c. 151, s. 32.

**32.**—(1) Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, a copy thereof or extract therefrom is admissible in evidence if it is proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original was entrusted.

(2) Such officer shall furnish the certified copy or extract to any person applying for it at a reasonable time, upon his paying therefor a sum not exceeding 10 cents for every folio of 100 words. R.S.O. 1970, c. 151, s. 33.

**33.**—(1) In this section, “bank” means a bank to which the *Bank Act* (Canada) applies or the Province of Ontario Savings Office, and includes a branch, agency or office of any of them.

(2) Subject to this section, a copy of an entry in a book or record kept in a bank is in any action to which the bank is not a party *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

(3) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proved that the book or record was at the time of making the entry one of the ordinary books or records of the bank, that the entry was made in the usual and ordinary course of business, that the book of record is in the custody or control of the bank,

or its successor, and that such copy is a true copy thereof, and such proof may be given by the manager or accountant, or a former manager of the bank or its successor, and may be given orally or by affidavit.

Production  
of books to  
be required  
only under  
order

(4) A bank or officer of a bank is not, in an action to which the bank is not a party, compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or a judge made for special cause.

Inspection  
of account

(5) On the application of a party to an action, the court or judge may order that such party be at liberty to inspect and take copies of any entries in the books or records of a bank for the purposes of such proceeding, but a person whose account is to be inspected shall be served with notice of the application at least two clear days before the hearing thereof, and, if it is shown to the satisfaction of the court or judge that such person cannot be notified personally, such notice may be given by addressing it to the bank.

Costs

(6) The costs of an application to a court or judge under or for the purposes of this section, and the costs of any thing done or to be done under an order of a court or judge made under or for the purposes of this section, are in the discretion of the court or judge who may order such costs or any part thereof to be paid to a party by the bank, where such costs have been occasioned by a default or delay on the part of the bank, and any such order against a bank may be enforced as if the bank were a party to the proceeding. R.S.O. 1970, c. 151, s. 34.

Interpre-  
tation

**34.—**(1) In this section,

(a) "person" includes,

- (i) the Government of Canada and of a province of Canada, and a department, commission, board or branch of any such government,
- (ii) a corporation, its successors and assigns, and
- (iii) the heirs, executors, administrators or other legal representatives of a person;

(b) "photographic film" includes any photographic plate, microphotographic film and photostatic negative, and "photograph" has a corresponding meaning.

Admissible  
in evidence

(2) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry therein kept or held by a person,

- (a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and
- (b) is destroyed by or in the presence of such person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film is admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from, Court may refuse to admit in evidence

- (a) the date when in the ordinary course of business either the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object; or
- (b) the date of receipt by the person having custody or control of the object of notice in writing of a claim in respect of the object or matter prior to the destruction of the object,

whichever is the later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection (3) does not apply. Exception

(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public, and, unless the court otherwise orders, a notarial copy of any such affidavit is admissible in evidence in lieu of the original affidavit. R.S.O. 1970, c. 151, s. 35. Proof of compliance with conditions

**35.—(1)** In this section,

Interpretation

- (a) “business” includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise;
- (b) “record” includes any information that is recorded or stored by means of any device.

Where  
business  
records  
admissible

(2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.

Notice and  
production

(3) Subsection (2) does not apply unless the party tendering the writing or record has given at least seven days notice of his intention to all other parties in the action, and any party to the action is entitled to obtain from the person who has possession thereof production for inspection of the writing or record within five days after giving notice to produce the same.

Surrounding  
circum-  
stances

(4) The circumstances of the making of such a writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight, but such circumstances do not affect its admissibility.

Previous  
rules as  
to admissi-  
bility and  
privileged  
documents  
not affected

(5) Nothing in this section affects the admissibility of any evidence that would be admissible apart from this section or makes admissible any writing or record that is privileged. R.S.O. 1970, c. 151, s. 36.

Judicial  
notice to be  
taken of  
signatures of  
judges, etc.

**36.**—(1) All courts, judges, justices, masters, clerks of courts, commissioners and other officers acting judicially, shall take judicial notice of the signature of any judge of any court in Canada, in Ontario and in every other province and territory in Canada, where his signature is appended or attached to a decree, order, certificate, affidavit, or judicial or official document.

Interpre-  
tation

R.S.O. 1980,  
cc. 285, 126

(2) The members of the Canadian Transport Commission and of the Ontario Municipal Board, the Mining and Lands Commissioner appointed under the *Ministry of Natural Resources Act* and a referee appointed under the *Drainage Act* shall be deemed judges for the purposes of this section. R.S.O. 1970, c. 151, s. 37; 1973, c. 105, s. 4.

Proof of  
hand-  
writing, when  
not required

**37.** No proof is required of the handwriting or official position of a person certifying to the truth of a copy of or extract from any proclamation, order, regulation or appointment, or to any matter or thing as to which he is by law authorized or required to certify. R.S.O. 1970, c. 151, s. 38.

Foreign  
judgments,  
etc., how  
proved

**38.** A judgment, decree or other judicial proceeding recovered, made, had or taken in the Supreme Court of Judicature or in any court of record in England or Ireland or in any of the superior courts of law, equity or bankruptcy in

Scotland, or in any court of record in Canada, or in any of the provinces or territories in Canada, or in any British colony or possession, or in any court of record of the United States of America, or of any state of the United States of America, may be proved by an exemplification of the same under the seal of the court without any proof of the authenticity of such seal or other proof whatever, in the same manner as a judgment, decree or other judicial proceeding of the Supreme Court in Ontario may be proved by an exemplification thereof. R.S.O. 1970, c. 151, s. 39.

**39.**—(1) A copy of a notarial act or instrument in writing made in Quebec before a notary and filed, enrolled or enregistered by such notary, certified by a notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, is receivable in evidence in the place and stead of the original, and has the same force and effect as the original would have if produced and proved. Copies of notarial acts in Quebec admissible

(2) The proof of such certified copy may be rebutted or set aside by proof that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary. R.S.O. 1970, c. 151, s. 40. How impeached

**40.** A protest of a bill of exchange or promissory note purporting to be under the hand of a notary public wherever made is *prima facie* evidence of the allegations and facts therein stated. R.S.O. 1970, c. 151, s. 41. Protests of bills and notes

**41.** Any note, memorandum or certificate purporting to be made by a notary public in Canada, in his own handwriting or to be signed by him at the foot of or embodied in any protest, or in a regular register of official acts purporting to be kept by him is *prima facie* evidence of the fact of notice of non-acceptance or non-payment of a bill of exchange or promissory note having been sent or delivered at the time and in the manner stated in such note, certificate or memorandum. R.S.O. 1970, c. 151, s. 42. Effect of certain certificates of notaries

**42.** In proving a title under a sheriff's conveyance based upon an execution issued from a small claims court, it is sufficient to prove the judgment recovered in the small claims court without proof of any prior proceedings. R.S.O. 1970, c. 151, s. 43. Proving titles under small claims court executions

Solemn  
declaration

**43.** Any person authorized to take declarations in Ontario may receive the solemn declaration of any person in attestation of the truth of any fact or of any account rendered in writing and, subject to subsection (2), the declaration and any declaration authorized or required by any Act of the Legislature shall be in the following form:

I, . . . . ., solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me  
at the            of  
this        day of            , 19

A Commissioner, etc.

R.S.O. 1970, c. 151, s. 44 (1).

Oaths, etc.,  
administered  
by commis-  
sioned  
officers

**44.**—(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made in or outside Ontario before a person who holds a commission as an officer in the Canadian Forces and is on full-time service is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

Admissi-  
bility

(2) A document that purports to be signed by a person mentioned in subsection (1) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him and on which his rank and unit are shown below his signature is admissible in evidence without proof of his signature or of his rank or unit or that he is on full-time service. R.S.O. 1970, c. 151, s. 45.

Oaths, etc.,  
administered  
outside  
Ontario

**45.**—(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside Ontario before,

(a) a judge;

(b) a magistrate;

(c) an officer of a court of justice;

(d) a commissioner for taking affidavits or other competent authority of the like nature;

- (e) a notary public;
- (f) the head of a city, town, village, township or other municipality;
- (g) an officer of any of Her Majesty's diplomatic or consular services, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul and acting consular agent;
- (h) an officer of the Canadian diplomatic, consular or representative services, including, in addition to the diplomatic and consular officers mentioned in clause (g), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary; or
- (i) a Canadian Government trade commissioner or assistant trade commissioner,

exercising his functions or having jurisdiction or authority as such in the place in which it is administered, sworn, affirmed or made, is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

(2) An oath, affidavit, affirmation or statutory declaration<sup>Idem</sup> administered, sworn, affirmed or made outside Ontario before a notary public for Ontario or before a commissioner for taking affidavits in Ontario is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits in Ontario.

(3) A document that purports to be signed by a person<sup>Admissibility</sup> mentioned in subsection (1) or (2) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him, and on which his office is shown below his signature, and

- (a) in the case of a notary public, that purports to have impressed thereon or attached thereto his official seal;
- (b) in the case of a person mentioned in clause (1) (f), that purports to have impressed thereon or attached thereto the seal of the municipality;

- (c) in the case of a person mentioned in clause (1) (g), (h) or (i), that purports to have impressed thereon or attached thereto his seal or the seal or stamp of his office or of the office to which he is attached,

is admissible in evidence without proof of his signature or of his office or official character or of the seal or stamp and without proof that he was exercising his functions or had jurisdiction or authority in the place in which the oath, affidavit, affirmation or statutory declaration was administered, sworn, affirmed or made. R.S.O. 1970, c. 151, s. 46.

Formal defects, when not to vitiate

R.S.O. 1980, c. 75

**46.** No informality in the heading or other formal requisites to any affidavit, declaration or affirmation made or taken before a commissioner or other person authorized to take affidavits under the *Commissioners for taking Affidavits Act*, or under this Act, is any objection to its reception in evidence if the court or judge before whom it is tendered thinks proper to receive it. R.S.O. 1970, c. 151, s. 47.

Affidavit sworn by solicitor for a party

**47.** An affidavit or declaration is not inadmissible or unusable in evidence in an action for the reason only that it is made before the solicitor of a party to the action or before the partner, associate, clerk or agent of such solicitor. 1976, c. 17, s. 1.

Admissibility of copies of depositions

**48.** Where an examination or deposition of a party or witness has been taken before a judge or other officer or person appointed to take it, copies of it, certified under the hand of the judge, officer or other person taking it, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. R.S.O. 1970, c. 151, s. 48.

Effect of probate, etc., as evidence of will, etc.

**49.** In order to establish a devise or other testamentary disposition of or affecting real estate, probate of the will or letters of administration with the will annexed containing such devise or disposition, or a copy thereof, under the seal of the surrogate court granting the same, or under the seal of the Supreme Court, where the probate or letters of administration were granted by the former court of probate for Upper Canada, are *prima facie* evidence of the will and of its validity and contents. R.S.O. 1970, c. 151, s. 49.

Proof in the case of will of real estate filed in courts outside Ontario

**50.**—(1) Where a person dies in any of Her Majesty's possessions outside Ontario having made a will sufficient to pass real estate in Ontario, purporting to devise, charge or affect real estate in Ontario, the party desiring to establish any such disposition, after giving one month's notice to the opposite party to the proceeding of his intentions so to do,

may produce and file the probate of the will or letters of administration with the will annexed or a certified copy thereof under the seal of the court that granted the same with a certificate of the judge, registrar or clerk of such court that the original will is filed and remains in the court and purports to have been executed before two witnesses, and such probate or letters of administration or certified copy with such certificate is, unless the court otherwise orders, *prima facie* evidence of the will and of its validity and contents.

(2) The production of the certificate mentioned in subsection (1) is sufficient *prima facie* evidence of the facts therein stated and of the authority of the judge, registrar or clerk, without proof of his appointment, authority or signature. R.S.O. 1970, c. 151, s. 50.

**51.** The production of a certificate, purporting to be signed by an authority authorized in that behalf by the *National Defence Act* or by regulations made thereunder, stating that the person named in the certificate died, or was deemed to have died, on a date set forth therein, is *prima facie* proof for any purpose to which the authority of the Legislature extends that the person so named died on that date, and also of the office, authority and signature of the person signing the certificate, without any proof of his appointment, authority or signature. R.S.O. 1970, c. 151, s. 51.

**52.**—(1) Any medical report obtained by or prepared for a party to an action and signed by a legally qualified medical practitioner licensed to practise in any part of Canada is, with the leave of the court and after at least seven days notice has been given to all other parties, admissible in evidence in the action.

(2) Unless otherwise ordered by the court, a party to an action is entitled to obtain the production for inspection of any report of which notice has been given under subsection (1) within five days after giving notice to produce the report.

(3) Except by leave of the judge presiding at the trial, a legally qualified medical practitioner who has medically examined any party to the action shall not give evidence at the trial touching upon such examination unless a report thereof has been given to all other parties in accordance with subsection (1).

(4) Where a legally qualified medical practitioner has been required to give evidence *viva voce* in an action and the court is of opinion that the evidence could have been produced as effectively by way of a medical report, the court may order the

party that required the attendance of the medical practitioner to pay as costs therefor such sum as it considers appropriate. R.S.O. 1970, c. 151, s. 52.

Interpre-  
tation  
R.S.O. 1980,  
c. 445

**53.**—(1) In this section, “instrument” has the meaning assigned to it in section 1 of the *Registry Act*.

Registered  
instrument  
as evidence

(2) A copy of an instrument or memorial, certified under the hand and seal of office of the land registrar, in whose office it is deposited, filed, kept or registered, to be a true copy, is *prima facie* evidence of the original, except in the cases provided for in subsection (3).

Where cer-  
tified copies  
of registered  
instruments  
may be used

(3) Where it would be necessary to produce and prove an instrument or memorial that has been so deposited, filed, kept or registered in order to establish such instrument or memorial and the contents thereof, the party intending to prove it may give notice to the opposite party, at least ten days before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the instrument or memorial, a copy thereof certified by the land registrar, under his hand and seal of office, and in every such case the copy so certified is sufficient evidence of the instrument or memorial and of its validity and contents unless the party receiving the notice, within four days after such receipt, gives notice that he disputes its validity, in which case the costs of producing and proving it may be ordered to be paid by any or either of the parties as is considered just. R.S.O. 1970, c. 151, s. 53.

Filing copies  
of official  
documents

**54.**—(1) Where a public officer produces upon a subpoena an original document, it shall not be deposited in court unless otherwise ordered, but, if the document or a copy is needed for subsequent reference or use, a copy thereof or of so much thereof as is considered necessary, certified under the hand of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original, and the officer is entitled to receive in addition to his ordinary fees the fees for any certified copy, to be paid to him before it is delivered or filed.

When  
original to  
be retained

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer and the exhibit shall be retained in court and filed. R.S.O. 1970, c. 151, s. 54.

Proof of  
certain  
written  
instruments

**55.**—(1) A party intending to prove the original of a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account or other written instrument used in business or other transactions, may give notice to the opposite party,

ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy of the documents, and in the notice shall name some convenient time and place for the inspection thereof.

(2) Such copy may then be inspected by the opposite party, and is without further proof sufficient evidence of the contents of the original document, and shall be accepted and taken in lieu of the original, unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding, and to require proof of the original, and the costs attending any production or proof of the original document are in the discretion of the court. R.S.O. 1970, c. 151, s. 55. Inspection

**56.** It is not necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite. R.S.O. 1970, c. 151, s. 56. Where no attestation required

**57.** Comparison of a disputed writing with a writing proved to the satisfaction of the court to be genuine shall be permitted to be made by a witness, and such writings and the evidence of witnesses respecting them may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute. R.S.O. 1970, c. 151, s. 57. Comparison of disputed writing with genuine

**58.** Where a document is received in evidence, the court admitting it may direct that it be impounded and kept in such custody for such period and subject to such conditions as seem proper, or until the further order of the court or of the Supreme Court or of a judge thereof or of a county or district court, as the case may be. R.S.O. 1970, c. 151, s. 58. Where instruments offered in evidence may be impounded

**59.** It is not necessary in an action to produce any evidence that, by section 1 of the *Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, and the evidence declared to be sufficient as between vendor and purchaser is *prima facie* sufficient for the purposes of the action. R.S.O. 1970, c. 151, s. 59. Evidence dispensed with under R.S.O. 1980, c. 520

**60.**—(1) Where it is made to appear to the Supreme Court or a judge thereof, or to a judge of a county or district court, that a court or tribunal of competent jurisdiction in a foreign country has duly authorized, by commission, order or other process, the obtaining of the testimony in or in relation to an action, suit or proceeding pending in or before such foreign court or tribunal, of a witness out of the jurisdiction thereof and within the jurisdiction of the court or judge so Evidence for foreign tribunals

applied to, such court or judge may order the examination of such witness before the person appointed, and in the manner and form directed by the commission, order or other process, and may, by the same or by a subsequent order, command the attendance of a person named therein for the purpose of being examined, or the production of a writing or other document or thing mentioned in the order, and may give all such directions as to the time and place of the examination, and all other matters connected therewith as seem proper, and the order may be enforced, and any disobedience thereto punished, in like manner as in the case of an order made by the same court or judge in an action pending in such court or before such judge.

Payment of  
expenses of  
witness

(2) A person whose attendance is so ordered is entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in the Supreme Court.

Right of  
refusal to  
answer  
questions  
and to  
produce  
documents

(3) A person examined under such commission, order or process has the like right to object to answer questions tending to criminate himself, and to refuse to answer any questions that, in an action pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made, the witness would be entitled to object or to refuse to answer, and no person shall be compelled to produce at the examination any writing, document or thing that he could not be compelled to produce at the trial of such an action.

Administra-  
tion of oath

(4) Where the commission, order or other process, or the instructions of the court accompanying the same, direct that the person to be examined shall be sworn or shall affirm, the person so appointed has authority to administer the oath to him or take his affirmation. R.S.O. 1970, c. 151, s. 60.

## CHAPTER 146

## Execution Act

## 1. In this Act,

Interpre-  
tation

- (a) "execution" includes a writ of *fiery facias* and every subsequent writ for giving effect thereto;
- (b) "sheriff" includes an officer to whom an execution is directed. R.S.O. 1970, c. 152, s. 1.

2. The following chattels are exempt from seizure under any writ issued out of any court: Exemptions

1. Necessary and ordinary wearing apparel of the debtor and his family not exceeding \$1,000 in value.
2. The household furniture, utensils, equipment, food and fuel that are contained in and form part of the permanent home of the debtor not exceeding \$2,000 in value.
3. In the case of a debtor other than a person engaged solely in the tillage of the soil or farming, tools and instruments and other chattels ordinarily used by the debtor in his business, profession or calling not exceeding \$2,000 in value.
4. In the case of a person engaged solely in the tillage of the soil or farming, the live stock, fowl, bees, books, tools and implements and other chattels ordinarily used by the debtor in his business or calling not exceeding \$5,000 in value.
5. In the case of a person engaged solely in the tillage of the soil or farming, sufficient seed to seed all his land under cultivation, not exceeding 100 acres, as selected by the debtor, and fourteen bushels of potatoes, and, where seizure is made between the 1st day of October and the 30th day of April, such food and bedding as are necessary to feed and bed the live stock and fowl that are exempt under this section until the 30th day of April next following. R.S.O. 1970, c. 152, s. 2.

Sale and  
refund of  
amount of  
exemption

**3.**—(1) Where exemption is claimed for a chattel referred to in paragraph 3 of section 2 that has a sale value in excess of \$2,000 plus the costs of the sale and other chattels are not available for seizure and sale, the chattel is subject to seizure and sale under a writ of execution and \$2,000 shall be paid to the debtor out of the proceeds of the sale.

Idem

(2) The debtor may, in lieu of the chattels referred to in paragraph 4 of section 2, elect to receive the proceeds of the sale thereof up to \$5,000, in which case the officer executing the writ shall pay the net proceeds of the sale if they do not exceed \$5,000 or, if they exceed \$5,000, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under that paragraph. R.S.O. 1970, c. 152, s. 3.

Money  
derived  
from sale  
of exempted  
goods

**4.** The sum to which a debtor is entitled under subsection 3 (1) or (2) is exempt from attachment or seizure at the instance of a creditor. R.S.O. 1970, c. 152, s. 4.

Disposal of  
exempted  
goods after  
death of the  
debtor

**5.** Chattels exempt from seizure are, after the death of the debtor, exempt from the claims of his creditors, and his widow is entitled to retain them for the benefit of herself and his family, or, if there is no widow, the family of the debtor is entitled to them. R.S.O. 1970, c. 152, s. 5.

Right of  
selection

**6.** The debtor, his widow or family, or, in the case of minors, their guardian, may select out of any larger number the chattels exempt from seizure. R.S.O. 1970, c. 152, s. 6.

Articles for  
which debt  
contracted

**7.**—(1) The exemptions prescribed in this Act do not apply to exempt any chattel from seizure to satisfy a debt contracted for the purchase of such chattel, except beds, bedding and bedsteads, including cradles in ordinary use by the debtor and his family and the necessary and ordinary wearing apparel of the debtor and his family.

Debt for  
maintenance

(2) The exemptions prescribed in this Act do not apply to exempt any article from seizure to satisfy a debt for maintenance of a spouse or former spouse or of a child, except tools, instruments and chattels ordinarily used by the debtor in his business, profession or calling.

Chattels  
purchased  
to defeat  
creditors

(3) The exemptions prescribed in this Act do not apply to chattels purchased for the purpose of defeating claims of creditors.

(4) The exemptions prescribed in this Act are not available to a corporate debtor. No exemption for corporations

(5) The exemptions prescribed in this Act bind the Crown. Exemptions R.S.O. 1970, c. 152, s. 7.

**8.**—(1) Where a dispute arises as to, Disputes

(a) whether or not a chattel is eligible for exemption from seizure under sections 2 to 7; or

(b) whether or not chattels claimed to be exempt exceed the value of the exemption prescribed by section 2,

the debtor or creditor may apply to the county or district court of the county or district in which the chattel is located for the determination of the question, and the court shall determine the question after a hearing upon such notice to such persons as the court directs.

(2) A sheriff may apply to the county or district court of the county or district of which he is the sheriff for direction on any matter arising under sections 2 to 7. Application by sheriff for direction R.S.O. 1970, c. 152, s. 8.

**9.** The sheriff to whom a writ of execution against lands is delivered for execution may seize and sell thereunder the lands of the execution debtor, including any lands whereof any other person is seized or possessed in trust for the execution debtor and including any interest of the execution debtor in lands held in joint tenancy. Sheriff may sell any lands of execution debtor R.S.O. 1970, c. 152, s. 9.

**10.**—(1) Subject to the *Land Titles Act* and to section 11, a writ of execution binds the goods and lands against which it is issued from the time of the delivery thereof to the sheriff for execution, but save as to bills of sale and instruments in the nature of chattel mortgages, no writ of execution against goods prejudices the title to such goods acquired by a person in good faith and for valuable consideration unless such person had, at the time when he acquired his title, notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached has been delivered to the sheriff and remains in his hands unexecuted. Writs against lands and goods R.S.O. 1980, c. 230

(2) The sheriff shall, upon the receipt of the writ and without fee, endorse thereon the day of the year, the month, the hour and the minute when it was received. Endorsement

Execution  
issued out of  
small claims  
court

(3) Subsection (1) does not apply to an execution against goods issued out of a small claims court, which binds only from the time of the seizure. R.S.O. 1970, c. 152, s. 10.

Writ not to  
bind lands  
unless name  
of debtor  
sufficient

**11.—(1)** Where the name of an execution debtor set out in a writ of execution is not that of a corporation or the firm name of a partnership, the writ does not bind the lands of the execution debtor unless,

- (a) the name of the execution debtor set out in the writ includes at least one given name in full; or
- (b) a statutory declaration of the execution creditor or his solicitor is filed with the sheriff identifying the execution debtor by at least one given name in full.

When writ  
binds land

(2) Subject to subsection (3), where a statutory declaration is filed under clause (1) (b), the name of the execution debtor set out in the writ shall be deemed to contain the given names affirmed in the declaration and the writ binds land from the time the declaration is filed.

Transmission  
to land  
registry office

R.S.O. 1980,  
c. 230

(3) Where a statutory declaration is filed under clause (1) (b) in respect of a writ of execution of which a copy has been transmitted to the proper land registrar under section 137 of the *Land Titles Act*, the sheriff shall transmit a copy of the declaration to the proper land registrar and the writ does not bind land registered under the *Land Titles Act* until the copy of the declaration has been received by the proper land registrar. R.S.O. 1970, c. 152, s. 11.

Notice to  
land  
registry  
office of  
withdrawal  
of writ of  
execution

**12.** Where a writ of execution or renewal thereof of which a copy was transmitted to the proper land registrar under section 137 of the *Land Titles Act* is withdrawn, the sheriff shall forthwith transmit to the proper land registrar a certificate under his hand stating that the writ has been withdrawn. R.S.O. 1970, c. 152, s. 12.

Liability of  
land to  
execution  
R.S.O. 1980,  
c. 223

**13.** Subject to the *Judicature Act* and the rules of court, land and other hereditaments and real estate belonging to any person indebted are liable to and chargeable with all just debts, duties and demands of whatsoever nature or kind owing by any such person to Her Majesty or to any of her subjects and are assets for the satisfaction thereof and are subject to the like remedies, proceedings and process for seizing, selling or disposing of them towards the satisfaction of such debts, duties and demands, and in like manner as personal estate is seized, sold or disposed of. R.S.O. 1970, c. 152, s. 13.

14.—(1) Shares and dividends and any equitable or other right, property, interest or equity of redemption in or in respect of shares or dividends in a chartered bank or a corporation having transferable shares shall be deemed to be personal property found in the place where notice of the seizure thereof is served, and may be seized under execution and sold thereunder in like manner as other personal property.

Seizure of  
shares and  
dividends  
under  
execution

(2) The sheriff on being informed on behalf of the execution creditor that the execution debtor has such shares, and on being required to seize them, shall forthwith serve a copy of the execution on the bank or corporation with a notice that all the shares of the execution debtor are seized thereunder, and from the time of service the seizure shall be deemed to be made and no transfer of the shares by the execution debtor is valid unless and until the seizure has been discharged, and every seizure and sale made under the execution shall include all dividends, premiums, bonuses or other pecuniary profits upon the shares seized, and they shall not, after notice as aforesaid, be paid by the bank or corporation to anyone except the person to whom the shares have been sold.

Notice of  
seizure

(3) Such seizure may be made and notice given by the sheriff where the bank or corporation has within his bailiwick a place at which service of process may be made, or where a share register is kept.

How  
seizure  
made

(4) If the bank or corporation has more than one place where service of process may be made, and there is some place where transfers of shares may be notified to and entered by the bank or corporation, so as to be valid as regards the bank or corporation, or where dividends or profits as aforesaid on stock may be paid other than the place where service of such notice has been made, the notice does not affect any transfer or payment of dividends or profits duly made and entered at any such other place, so as to subject the bank or corporation to pay twice, or so as to affect the rights of a *bona fide* purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of service by post from the place where it has been made to such other place, which notice it is the duty of the bank or corporation to so transmit.

Provisions  
for the case  
of more  
than one  
place of  
service

(5) Where any such share is sold, the sheriff shall within ten days after the sale serve upon the bank or corporation at a place where service of process may be made a copy of the execution with his certificate endorsed thereon certifying

Mode of  
proceeding  
after sale

the sale and the name of the purchaser who shall have the same rights and be under the same obligations as if he had purchased the share from the execution debtor at the time of the service of notice under subsection (2).

Saving of  
all other  
remedies

(6) Nothing in this Act affects any remedy that the execution creditor might, without this Act, have had against any such share or the dividends, premiums, bonuses or other pecuniary profits in respect thereof, and subsections (1) to (4) apply to such remedy in so far as they can be applied thereto. R.S.O. 1970, c. 152, s. 14.

Seizure and  
sale of  
shares in  
private  
company

**15.** If a sheriff seizes the shares of an execution debtor in a private company, he shall first offer them for sale to the other shareholders or any one of them in such private company, and if none of them will purchase the shares for a reasonable price, the sheriff may then offer the debtor's interest therein for sale to the public generally and sell and convey to the highest bidder. R.S.O. 1970, c. 152, s. 15.

Procedure  
for sale of  
equitable  
interests

**16.** The procedure for seizure and sale in the case of an equitable or other right, property, interest or equity of redemption in or in respect of a share shall be the same as hereinbefore provided in the case of shares and dividends, and the same shall be held to be personal property found in the place where notice of the seizure is served. R.S.O. 1970, c. 152, s. 16.

Rights under  
patent of  
invention

**17.—**(1) All rights under letters patent of invention and any equitable or other right, property, interest or equity of redemption therein shall be deemed to be personal property and may be seized and sold under execution in like manner as other personal property.

How seizable

(2) Such seizure and sale may be made by the sheriff of any county or district having in his hands to be executed an execution against the property of the debtor who is the owner of or interested in the letters patent.

Notice of  
seizure

(3) Notice of the seizure shall forthwith be sent to the Patent Office, Ottawa, and the interest of the debtor shall be bound from the time when the notice is received there. R.S.O. 1970, c. 152, s. 17.

Seizure and  
sale of rights  
in chattels,  
etc.

**18.** The sheriff may seize and sell any equitable or other right, property, interest or equity of redemption in or in respect of any goods, chattels or personal property, including leasehold interests in any land of the execution debtor, and, except where the sale is under an execution against goods

issued out of a small claims court, the sale conveys whatever equitable or other right, property, interest or equity of redemption he had or was entitled to in or in respect of the goods, chattels or personal property at the time of the delivery of the execution to the sheriff for execution, and, where the sale is under an execution against goods issued out of a small claims court, the sale conveys whatever equitable or other right, property, interest or equity of redemption the debtor had or was entitled to in or in respect of the goods, chattels or personal property at the time of the seizure. R.S.O. 1970, c. 152, s. 18.

**19.—**(1) The sheriff shall seize any money or bank-<sup>Money and securities for money</sup> notes, including any surplus of a former execution against the debtor, and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money belonging to the person against whom the execution has been issued, and, subject to the *Creditors' Relief Act*,<sup>R.S.O. 1980, c. 103</sup> shall pay or deliver to the party who sued out the execution the money or banknotes so seized, or a sufficient part thereof, and hold such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money as security for the amount directed to be levied, or so much thereof as has not been otherwise levied or raised, and the sheriff may sue in his own name for the recovery of the sums secured thereby.

(2) The sheriff may seize any book debts and other<sup>Book debts and choses in action</sup> choses in action of the execution debtor and may sue in his own name for the recovery of the moneys payable in respect thereof.

(3) If it appears to the sheriff that an attempt to collect<sup>Sale by sheriff</sup> the book debts, choses in action or the securities for the money referred to in subsections (1) and (2) would be less beneficial to the creditors than a sale thereof, the sheriff may proceed to sell such book debts, choses in action and securities by public auction in the same manner as the debtor's goods may be sold when taken in execution.

(4) The payment to the sheriff by the person liable on<sup>Effect of payment to sheriff</sup> such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security, with or without suit, or recovery from him, discharges him to the extent of such payment or recovery from his liability thereon.

(5) Subject to the *Creditors' Relief Act*, the sheriff shall<sup>Payment of proceeds</sup> pay over to the party who sued out the execution the money so paid or recovered, or a sufficient sum to discharge the amount directed to be levied, and if, after satisfaction

thereof and of the fees, poundage and expenses of the sheriff, a surplus remains, it shall be paid to the party against whom the execution issued.

Indemnity  
of sheriff

(6) A sheriff is not bound to sue any person liable upon such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify the sheriff against all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof, and the expenses of the bond, not exceeding \$5, may be deducted from any money recovered in the action. R.S.O. 1970, c. 152, s. 19.

When sheriff  
obliged to  
seize goods  
claimed by  
third parties

**20.**—(1) A sheriff is not, without written instructions and a bond as hereinafter mentioned, obliged to seize property in the possession of a third person claiming it and not in the possession of the debtor against whose property the execution was issued.

Instructions

(2) The instructions shall specify the property in such a way as to enable the sheriff to identify it.

Bond

(3) The bond shall be a bond of indemnity to the sheriff and his assigns, with two sufficient sureties who shall justify in double the value of the property, and the value shall be stated in an affidavit by the creditor or his solicitor or agent attached to the bond.

Conditions  
of bond

(4) The bond shall be assignable to the claimant, and shall be conditioned that the persons executing it shall be liable for the damages, costs and expenses that the sheriff or the claimant may be put to by the seizure and subsequent proceedings, including interpleader proceedings, if any, and which he does not recover from other persons who ought to pay them.

Settlement  
by judge

(5) If the sheriff is not satisfied with the bond offered, the matter in difference shall be determined by a judge of the county or district court of the county or district.

Right of  
sheriff to  
interpleader

(6) Nothing in this section limits the right of the sheriff to apply for relief by interpleader. R.S.O. 1970, c. 152, s. 20.

Taking  
money  
secured by  
mortgage  
under  
execution

**21.**—(1) If a sheriff is informed on behalf of the execution creditor that the execution debtor is a mortgagee of land and that the mortgage is registered, or that he is entitled to receive a sum of money charged upon land by virtue of a registered instrument, and, if the sheriff is required

on behalf of the execution creditor to seize the mortgage or charge and is furnished in writing with the information necessary to enable him to give the notice hereinafter mentioned, he shall, upon payment of the proper fees, forthwith deliver or transmit to the land registrar in whose office the mortgage or other instrument is registered, who shall forthwith register it, a notice in the form or to the effect following:

To the Land Registrar of .....

Form of  
sheriff's  
notice to  
registrar

By virtue of an execution issued out of the Supreme Court of Ontario.....(*or as the case may be*) whereby I am commanded to levy of the goods and chattels of *A. B.* \$.....for debt, and \$.....for costs lately adjudged to be paid by *A. B.* to *C. D.*, besides the costs of execution, I have this day seized and taken in execution all the estate, right, title and interest of *A. B.* in a mortgage made by *X. Y.* to *A. B.*, bearing date the.....day of....., 19....., and registered in the Land Registry Office for the Land Registry Division of.....(*or as the case may be*) on the.....day of....., 19....., as number.....(*or the said mortgage or other instrument may be described in any other manner by reference to dates, parties and the land covered as will enable the notice to be registered against the land therein described*) and in the money secured thereby, and this notice is given for the purpose of binding the interest of *A. B.* under sections 21 to 25 of the *Execution Act*.

Dated this.....day of....., 19.....

(Signed).....  
Sheriff of the County (*or District*) of.....

(2) Upon registration of the notice, the interest of the execution debtor in the mortgage or other instrument and in the land therein described and in the money thereby secured and in all covenants and stipulations for securing payment thereof is bound by the execution, and such registration is notice of the execution and seizure to all persons who may thereafter in any way acquire an interest in the mortgage, land, money or covenants, and the rights of the sheriff and of the execution creditor have priority over the rights of all such persons subject, as regards the mortgagor or person liable to pay the money secured by the mortgage or charge, to section 22. R.S.O. 1970, c. 152, s. 21.

Effect of  
registration  
of sheriff's  
notice to  
registrar

**22.**—(1) A notice similar to that mentioned in section 21 shall also be served upon the mortgagor or the person who is liable to pay the money secured by the registered instrument, and after such service the person served shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable to the execution debtor so far as may be necessary to satisfy the execution.

Notice to  
mortgagor

Mode of  
effecting  
service

(2) Service of the notice may be made personally, or by leaving it at the dwelling-house of the person to be served with a grown-up person residing there, or by registered mail to the proper address of the person to be served.

Payments  
made after  
notice

(3) Any payment made after service of the notice or after actual knowledge of the seizure is void as against the sheriff and the execution creditor. R.S.O. 1970, c. 152, s. 22.

Sheriff  
enforcing  
mortgage

**23.** In addition to the remedies provided in this Act, the sheriff may bring an action on any mortgage or other instrument seized under this Act for the sale or foreclosure of the land covered by it, and is entitled to a bond of indemnity as in the cases provided for in subsection 19 (6). R.S.O. 1970, c. 152, s. 23.

When  
seizure may  
be vacated

**24.—**(1) Upon an execution, notice whereof is registered under section 21, expiring or being satisfied, set aside or withdrawn, a certificate of such fact shall be given by the sheriff or by the execution creditor, and it or the order to set aside, as the case may be, may be registered, and thereupon the seizure is vacated and at an end.

Verification  
of order and  
certificates

(2) The order or the certificate of the sheriff does not require verification.

Idem

(3) The certificate of the execution creditor shall be verified by the oath of a subscribing witness as in the case of other instruments affecting land. R.S.O. 1970, c. 152, s. 24.

Fees of  
registrar  
and sheriff

**25.** For every notice of seizure under section 21, the sheriff is entitled to a fee of \$1, and for every certificate under section 24 to a fee of 75 cents. R.S.O. 1970, c. 152, s. 25.

Taking  
chattel  
mortgage in  
execution

**26.** Where an execution debtor is a mortgagee of chattels and the security is perfected by registration as required by law, sections 21 to 25 are applicable, except that the notice to be given by the sheriff shall be delivered to the Registrar appointed under the *Personal Property Security Act*. R.S.O. 1970, c. 152, s. 26, revised.

R.S.O. 1980,  
c. 375

Interpre-  
tation

**27.—**(1) Where the word "mortgagor" occurs in this section, it shall be read and construed as if the words "his heirs, executors, administrators or assigns, or person having the equity of redemption" were inserted immediately after the word "mortgagor".

(2) The sheriff to whom an execution against the lands and tenements of a mortgagor is directed may seize, sell and convey all the interest of the mortgagor in any mortgaged lands and tenements. Interest of a mortgagor

(3) The equity of redemption in freehold land is saleable under an execution against the lands and tenements of the owner of the equity of redemption in his lifetime, or in the hands of his executors or administrators after his death, subject to the mortgage, in the same manner as land and tenements may now be sold under an execution. Equity of redemption

(4) Where more mortgages than one of the same lands have been made to the same mortgagee or to different mortgagees, subsections (2) and (3) apply, and the equity of redemption is saleable under an execution against the lands and tenements of the owner, subject to the mortgages, in the same manner as in the case of land subject to one mortgage only. Selling lands subject to more than one mortgage in execution

(5) The effect of the seizure or taking in execution, sale and conveyance of mortgaged lands and tenements is to vest in the purchaser, his heirs and assigns, all the interest of the mortgagor therein at the time the execution was placed in the hands of the sheriff, as well as at the time of the sale, and to vest in the purchaser, his heirs and assigns, the same rights as the mortgagor would have had if the sale had not taken place, and the purchaser, his heirs or assigns, may pay, remove or satisfy any mortgage, charge or lien that at the time of the sale existed upon the lands or tenements so sold in like manner as the mortgagor might have done, and thereupon the purchaser, his heirs and assigns, acquire the same estate, right and title as the mortgagor would have acquired in case the payment, removal or satisfaction had been effected by the mortgagor. Effect of sale

(6) A mortgagee of land, or the executors, administrators or assigns of a mortgagee, being or not being the execution creditor, may be the purchaser at the sale and acquire the same estate, interest and rights thereby as any other purchaser, but in that event he or they shall give to the mortgagor a release of the mortgage debt, and if another person becomes the purchaser, and, if the mortgagee, his executors, administrators or assigns enforce payment of the mortgage debt by the mortgagor, the purchaser shall repay the debt and interest to the mortgagor, and, in default of payment thereof within one month after demand, the mortgagor may recover the debt and interest from the purchaser, and has a charge therefor upon the mortgaged land. R.S.O. 1970, c. 152, s. 27. Effect of purchase by mortgagee or execution creditor

Contingent  
interests  
liable to  
execution  
R.S.O. 1980,  
c. 90

**28.**—(1) Any estate, right, title or interest in land which, under section 10 of the *Conveyancing and Law of Property Act*, may be conveyed or assigned by any person, or over which he has any disposing power that he may, without the assent of any other person, exercise for his own benefit, is liable to seizure and sale under execution against such person in like manner and on like conditions as land is by law liable to seizure and sale under execution, and the sheriff selling it may convey and assign it to the purchaser in the same manner and with the same effect as the person might himself have done. R.S.O. 1970, c. 152, s. 28 (1).

Property  
subject to  
power of  
appoint-  
ment

(2) Property over which a deceased person had a general power of appointment exercisable for his own benefit without the assent of any other person where it is appointed by his will may be seized and sold under an execution against the personal representative of such deceased person after the property of the deceased has been exhausted. R.S.O. 1970, c. 152, s. 28 (3).

Interest in  
pew or  
sitting

**29.**—(1) The interest of a person derived by deed, lease or licence in writing from the churchwardens or other authorities of any church in a pew or sitting, if the interest is assignable by the holder thereof, may be sold under execution at the suit of the churchwardens or other authorities for arrears of rent or other charges to which the pew or sitting is subject, or which the holder thereof may have agreed to pay or for which he may be liable, or at the suit of any creditor of such holder, and the churchwardens or other authorities may become purchasers at such sale on behalf of the church, and may relet or sell the right so acquired.

Deed

(2) The sheriff may execute a deed to the purchaser of the interest so sold, and the churchwardens or other authorities shall, on production of the deed, give effect to it upon payment of any arrears of rent or charge then due.

Saving

(3) Such sale is subject to any continuing rent or charge of such pew or sitting previously stipulated for or imposed, and does not prejudice the right to impose increased rent or charges on such pew or sitting pursuant to any law or custom. R.S.O. 1970, c. 152, s. 29.

How  
execution  
enforceable  
against  
executor,  
etc.

**30.** The title and interest of a testator or intestate in land may be seized and sold under an execution upon a judgment recovered by a creditor of the testator or intestate

against his executor or administrator in the same manner and under the same process as upon a judgment against the deceased if he were living. R.S.O. 1970, c. 152, s. 30.

**31.—**(1) An execution against a municipal corporation may be endorsed with a direction to the sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following:

Executions  
against  
municipal  
corporations

1. The sheriff shall deliver a copy of the writ and endorsement to the treasurer of the municipal corporation, or leave such copy at the office or dwelling-place of that officer, with a statement in writing of the sheriff's fees and of the amount required to satisfy the execution, including the interest calculated to some day as near as is convenient to the day of the service. Statement  
of claim to  
treasurer
2. If the amount with interest thereon from the day mentioned in the statement is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment roll of the municipality and shall, in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, with such addition as the sheriff considers sufficient to cover the interest up to the time when the rate will probably be available, and his own fees and poundage. When sheriff  
to strike rate
3. The sheriff shall thereupon issue a precept under his hand and seal of office directed to the collector of the corporation, and shall annex to the precept the roll of such rate, and shall, by the precept after reciting the writ and that the corporation has neglected to satisfy it and referring to the roll annexed to the precept, command the collector to levy such rate at the time and in the manner by law required in respect to the general annual rates. Sheriff's  
precept to  
collector,  
etc., to levy  
rate
4. If, at the time for levying the annual rates next after the receipt of such report, the collector has a general rate roll delivered to him for the year, he shall add a column thereto headed "Execution rate in *A.B. vs. The Township of* . . . . .", adding a similar column for each execution if more than one, and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the Rate rolls

time within which he is required to make the return of the general annual rate, return to the sheriff the precept with the amount levied thereon.

**Surplus**

5. The sheriff shall, after satisfying the execution and all the fees and poundage thereon, pay any surplus, within ten days after receiving it, to the treasurer of the municipal corporation.

**Functions of clerk, assessors and collectors**

(2) The clerk, assessor and collector of the corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect, the provisions of this Act with respect to such execution, be deemed to be officers of the court out of which the writ issued, and as such are amenable to the court and may be proceeded against by attachment, mandamus or otherwise in order to compel them to perform the duties imposed upon them. R.S.O. 1970, c. 152, s. 31.

**Jurisdiction of sheriff on annexation**

**32.**—(1) Where an area of land in a county or provisional judicial district is annexed for judicial purposes to an adjoining county or provisional judicial district,

- (a) all writs of execution in the hands of the sheriff of the county or provisional judicial district to which the area is annexed at the time of the annexation bind the land in the annexed area from that time, subject to section 137 of the *Land Titles Act*; and
- (b) the annexed area shall be deemed to remain in the bailiwick of the sheriff of the county or provisional judicial district of which it was formerly a part in respect of each writ of execution in his hands at the time of the annexation until its withdrawal, expiry or renewal, as the case may be.

R.S.O. 1980,  
c. 230

**Levy against land in annexed area**

(2) No steps shall be taken by either sheriff referred to in subsection (1) to seize and sell real or personal property of a debtor in the annexed area under a writ of execution, until he has notified the other sheriff of his intention to do so, and the sheriff so notified shall forward to the sheriff executing the writ a certified copy of each writ of execution against the debtor,

- (a) in his hands, where the sheriff notified is the sheriff of the county or provisional judicial district to which the area is annexed; or
- (b) in his hands at the time of the annexation and not thereafter withdrawn, expired or renewed,

where the sheriff notified is the sheriff of the county or provisional judicial district of which the annexed area was formerly a part.

(3) Where a certified copy of a writ of execution is received by a sheriff under subsection (2), the copy shall be deemed to be a writ of execution directed to the sheriff receiving it and filed by the creditor named therein on the day of its receipt.

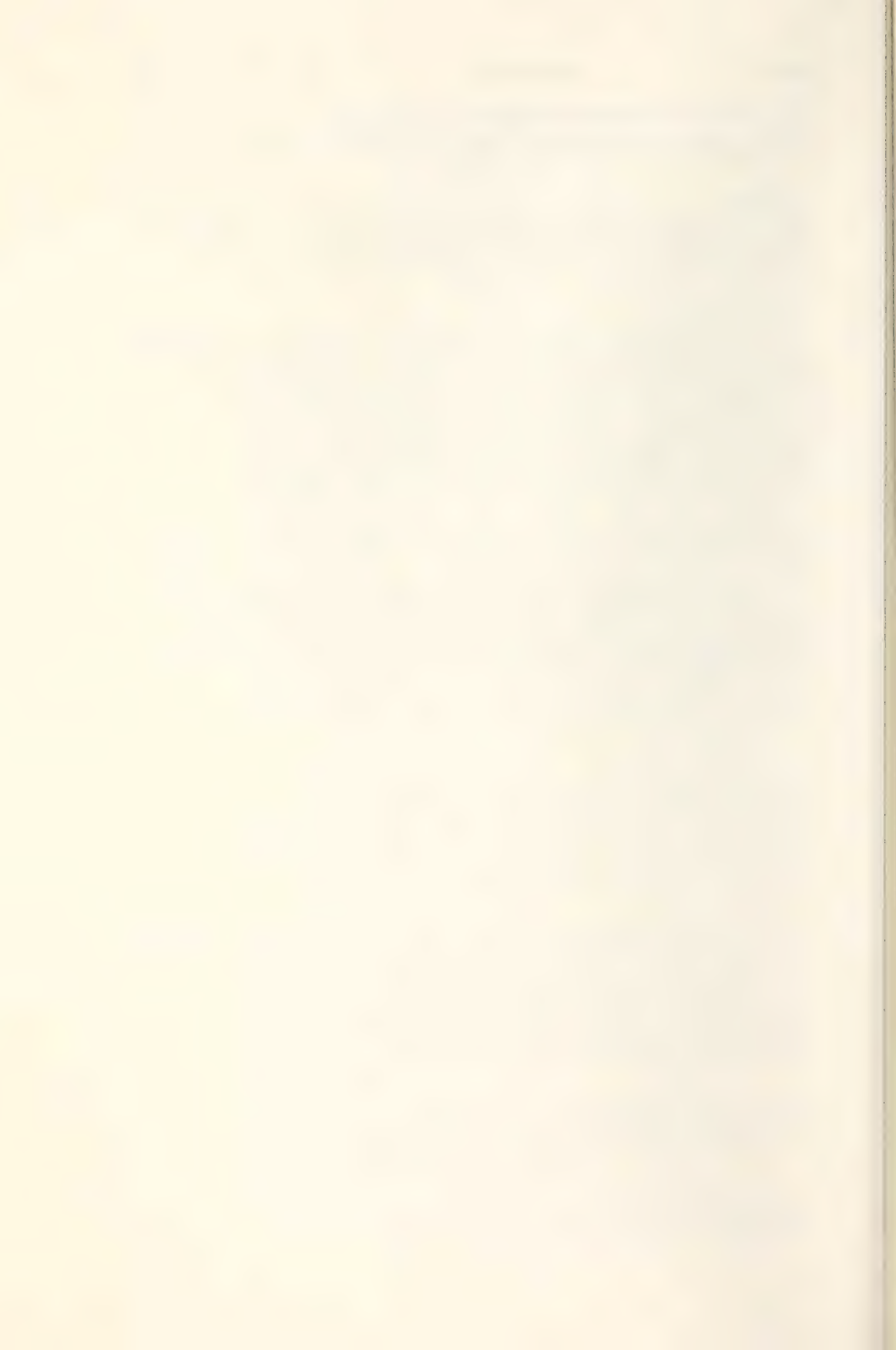
Filing of writs of execution before sale

(4) This section applies to liens for bail under the *Bail Act* against land in the annexed area to which the *Registry Act* applies in the same manner as if the certificates of lien for bail were writs of execution, except that a lien of which a certificate was delivered to the sheriff of the county or provisional judicial district of which the annexed area was formerly part shall expire three years after the annexation takes effect unless it is sooner discharged or a certificate thereof is delivered to the sheriff in whose bailiwick the land is situate. R.S.O. 1970, c. 152, s. 32.

Liens for bail  
R.S.O. 1980, cc. 36, 445

(5) Where a regional or district municipality or a county is created, the land therein shall be deemed to be annexed to the regional or district municipality or county for the purposes of this section. 1974, c. 84, s. 1.

Creation of regional or district municipalities or counties



## CHAPTER 147

## Executive Council Act

1. The Executive Council shall be composed of such persons <sup>Executive Council, how composed</sup> as the Lieutenant Governor from time to time appoints, and all executive councillors so appointed are ministers of the Crown, and rank among themselves in the order of their appointments. R.S.O. 1970, c. 153, s. 1.

2.—(1) The Lieutenant Governor may appoint under the <sup>Portfolios</sup> Great Seal from among the ministers of the Crown the following ministers to hold office during pleasure:

President of the Council  
Attorney General  
Chairman of the Management Board of Cabinet  
Minister of Agriculture and Food  
Minister of Colleges and Universities  
Minister of Community and Social Services  
Minister of Consumer and Commercial Relations  
Minister of Correctional Services  
Minister of Culture and Recreation  
Minister of Education  
Minister of Energy  
Minister of the Environment  
Minister of Government Services  
Minister of Health  
Minister of Housing  
Minister of Industry and Tourism  
Minister of Intergovernmental Affairs  
Minister of Labour  
Minister of Natural Resources  
Minister of Northern Affairs  
Minister of Revenue  
Minister of Transportation and Communications  
Provincial Secretary for Justice  
Provincial Secretary for Resources Development  
Provincial Secretary for Social Development  
Solicitor General  
Treasurer of Ontario and Minister of Economics

and such other ministers as the Lieutenant Governor sees fit, and may by order in council prescribe their duties and the duties of any ministries over which they preside, and of the officers and clerks under their jurisdiction.

## Parliamentary Assistants

(2) The Lieutenant Governor in Council may appoint such Parliamentary Assistants to assist such ministers of the Crown as he considers advisable and may prescribe their duties. 1972, c. 1, s. 3 (1), *revised*.

## Salaries

3.—(1) The annual salary of every minister with portfolio is \$21,000.

## Additional salary for First Minister

(2) The member of the Executive Council holding the recognized position of First Minister shall receive, in addition, \$8,900 per annum.

## Salary of minister without portfolio

(3) The annual salary of every minister without portfolio is \$9,000.

## Salary of Parliamentary Assistant

(4) The annual salary of every Parliamentary Assistant is \$6,500. 1980, c. 17, s. 1.

## How payable

(5) The salaries are chargeable upon and payable yearly and *pro rata* for any period less than a year out of the Consolidated Revenue Fund. R.S.O. 1970, c. 153, s. 3 (4).

## Cost of accommodation in Toronto

4.—(1) Every minister of the Crown whose principal residence is outside The Municipality of Metropolitan Toronto shall be paid the actual cost of his accommodation within The Municipality of Metropolitan Toronto not exceeding in any year an amount that is \$1,000 more than the amount determined in respect of the year by the Board of Internal Economy under subsection 66 (7) of the *Legislative Assembly Act*. 1980, c. 78, s. 1.

R.S.O. 1980,  
c. 235

## Expenses of Parliamentary Assistants

(2) Every Parliamentary Assistant shall be paid the expenses actually and reasonably incurred by him in carrying out his duties as a Parliamentary Assistant. 1973, c. 150, s. 2, *part*.

## Transfer of duties from one member of Council to another

5.—(1) Notwithstanding the *Legislative Assembly Act*, any of the powers and duties that have been heretofore or may be hereafter assigned by law to any minister of the Crown may from time to time by order in council be assigned and transferred either for a limited period or otherwise to any other minister by name or otherwise.

## Minister acting upon request

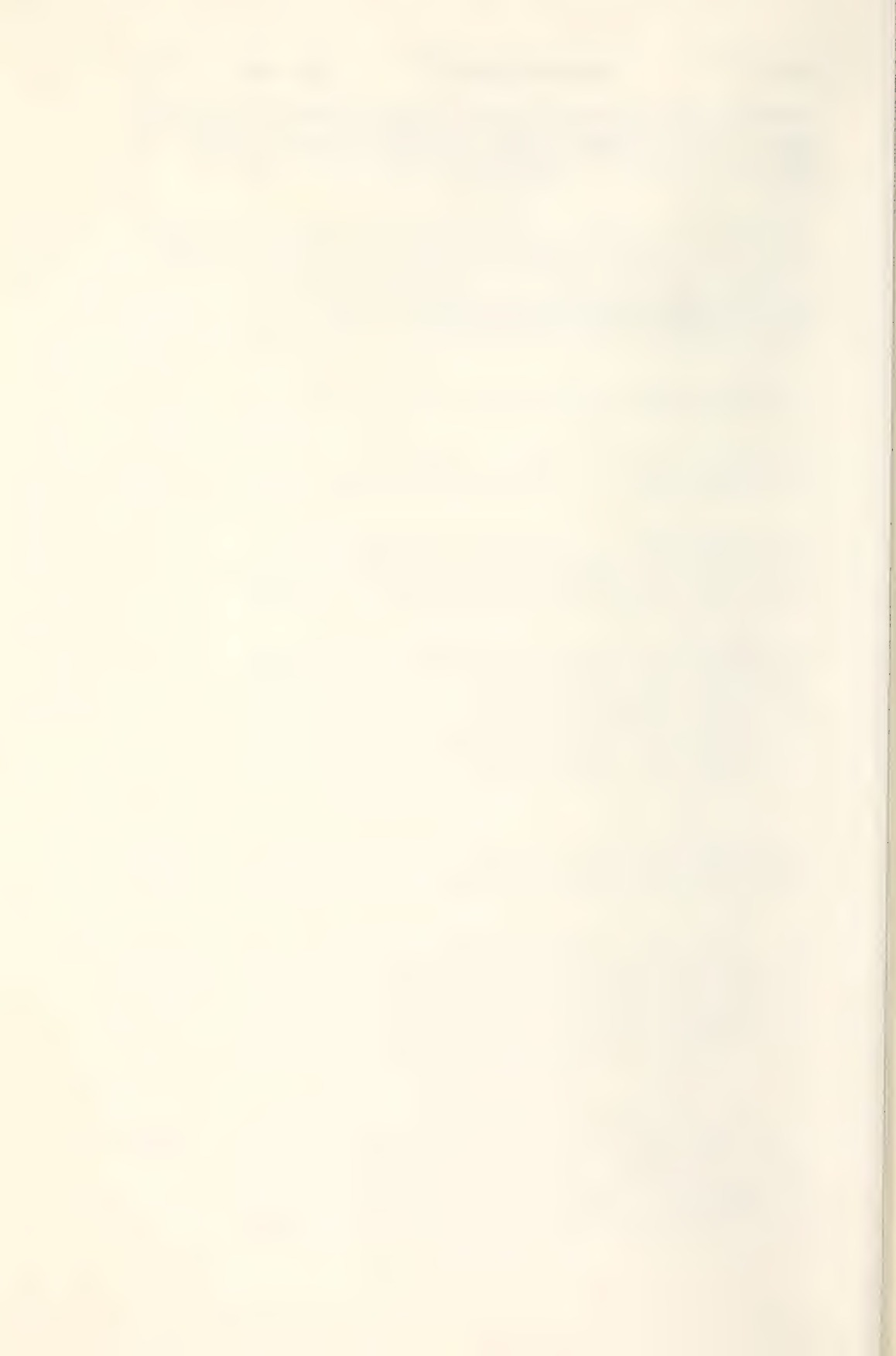
(2) On request made to him by the minister to whom any duties and powers have been assigned as provided in subsection (1), any other minister may for a period not exceeding one week perform such duties and exercise such powers in place of the minister making the request, and in such case no order in council is necessary.

(3) Where any such duties and powers are assigned to a minister without portfolio, he does not thereby become ineligible as a member of the Assembly or to sit or vote therein. R.S.O. 1970, c. 153, s. 4.

6. No deed or contract in respect of any matter under the control or direction of a minister is binding on Her Majesty or shall be deemed to be the act of such minister unless it is signed by him or is approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 153, s. 5.

Minister  
without  
portfolio  
may act

Execution  
of contracts  
with Crown



## CHAPTER 148

## Expropriations Act

## 1.—(1) In this Act,

Interpre-  
tation

(a) “approving authority” means the approving authority as determined under section 5;

(b) “Board” means the Land Compensation Board under section 28;

(c) “expropriate” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers, but does not include the taking of land for the widening of a highway where entry is deferred under section 196 of the *Municipal Act*;

R.S.O. 1980,  
c. 302

(d) “expropriating authority” means the Crown or any person empowered by statute to expropriate land;

(e) “injurious affection” means,

(i) where a statutory authority acquires part of the land of an owner,

(A) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

(B) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(ii) where the statutory authority does not acquire part of the land of an owner,

(A) such reduction in the market value of the land of the owner, and

(B) such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired;

- (f) "judge", except where otherwise described, means a judge of the county or district court of the county or district in which the land or the greater part of it is situate;
- (g) "land" includes any estate, term, easement, right or interest in, to, over or affecting land;
- (h) "owner" includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;
- (i) "prescribed" means prescribed by the regulations made under this Act;
- (j) "purchase-money mortgage" means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;
- (k) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper land registry or sheriff's office, and includes a person shown as a tenant of land on the last revised assessment roll;
- (l) "security holder" means a person who has an interest in land as security for the payment of money;

- (m) "statutory authority" means the Crown or any person empowered by statute to expropriate land or cause injurious affection;
- (n) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied.

(2) Any document required by this Act to be served Service may be served personally or by registered mail addressed to the person to be served at his last known address, or if that person or his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made,

- (a) in the case of service by registered mail, on the second day after the day of mailing; and
- (b) in the case of service by publication, on the date of the third publication. R.S.O. 1970, c. 154, s. 1.

**2.**—(1) Notwithstanding any general or special Act, where Application of Act land is expropriated or injurious affection is caused by a statutory authority, this Act applies. R.S.O. 1970, c. 154, s. 2 (1).

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to the *Municipal Act*, the *Ministry of Government Services Act* or any other Act shall be deemed to refer to this Act and not to the *Municipal Act*, the *Ministry of Government Services Act* or other Act, as the case may be. R.S.O. 1970, c. 154, s. 2 (2); 1973, c. 2, s. 2. References in other Acts to R.S.O. 1980, cc. 302, 279 deemed references to this Act

(3) This Act does not apply to the use of or injury to Application to land authorized under the *Drainage Act* for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith. R.S.O. 1980, c. 126

(4) Where there is conflict between a provision of this Conflict Act and a provision of any other general or special Act, the provision of this Act prevails. R.S.O. 1970, c. 154, s. 2 (3, 4).

**3.** This Act binds the Crown. R.S.O. 1970, c. 154, s. 3. Crown bound by Act

Approval of  
intention to  
expropriate

4.—(1) An expropriating authority shall not expropriate land without the approval of the approving authority as determined under section 5.

Gas storage  
areas  
excepted  
R.S.O. 1980,  
c. 332

(2) Subsection (1) does not apply to an authorization of the Ontario Energy Board under the *Ontario Energy Board Act* in respect of storage of gas in a gas storage area or to an expropriation authorized under section 49 of that Act. R.S.O. 1970, c. 154, s. 4.

Approving  
authority

5.—(1) Subject to subsections (4), (5) and (6), the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

(a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and

(b) where an elected school board expropriates lands, the approving authority shall be the school board. R.S.O. 1970, c. 154, s. 5 (1).

Idem.  
Metropolitan  
Toronto  
School  
Board

(2) For the purposes of clause (1) (b), the Metropolitan Toronto School Board shall be deemed to be an elected school board. 1971, c. 12, s. 1.

Idem.  
private  
Acts

(3) Where the power to expropriate is granted in a private Act, the approving authority shall be,

(a) in the case of universities or other educational institutions, the Minister of Colleges and Universities;

(b) in the case of hospitals or other medical or health institutions, the Minister of Health; and

(c) in the case of all other corporations, the Attorney General. R.S.O. 1970, c. 154, s. 5 (2); 1972, c. 1, ss. 10, 12 (4).

Idem,  
public works  
R.S.O. 1980,  
c. 279

(4) Where an expropriation is made under the *Ministry of Government Services Act* for the benefit of a ministry or agency of the Ontario Government, the approving authority shall be the minister for the ministry or responsible for the agency for the benefit of which the land is expropriated. R.S.O. 1970, c. 154, s. 5 (3); 1972, c. 1, s. 2; 1973, c. 2, s. 2.

(5) Where an expropriation is made under the *Power Corporation Act*, the approving authority shall be the Minister of Energy. R.S.O. 1970, c. 154, s. 5 (4); 1972, c. 1, s. 67 (4); 1973, c. 57, s. 19; O. Reg. 504/75. Idem. Power Corporation R.S.O. 1980, c. 384

(6) The approving authority in any case not provided for in this section shall be the Attorney General. R.S.O. 1970, c. 154, s. 5 (5); 1972, c. 1, s. 9 (7). Idem. other cases

**6.**—(1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate. Notice of intention to expropriate

(2) Any owner of lands in respect of which notice is given under subsection (1) who desires a hearing shall so notify the approving authority in writing, Notification for hearing

(a) in the case of a registered owner, served personally or by registered mail within thirty days after he is served with the notice, or, where he is being served with the notice by publication, within thirty days after the first publication of the notice;

(b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice.

(3) The Lieutenant Governor in Council may, in special circumstances where he considers it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure and thereupon subsections (1) and (2) of this section, section 7 and subsections 8 (1) and (2) do not apply thereto. Order dispensing with inquiry

(4) Where an order is made under subsection (3), the expropriating authority shall forthwith serve a copy of the order on each registered owner affected by the intended expropriation. R.S.O. 1970, c. 154, s. 6 (1-4). Service of order

(5) The Attorney General shall, within thirty days after the commencement of each session of the Legislative Assembly, lay before the Assembly a copy of each order made theretofore under subsection (3) and not previously laid before the Assembly. R.S.O. 1970, c. 154, s. 6 (5); 1972, c. 1, s. 9 (7). Report to Assembly

**Appointment  
of inquiry  
officers**

7.—(1) The Attorney General shall appoint a chief inquiry officer and such inquiry officers as he considers necessary. R.S.O. 1970, c. 154, s. 7 (1); 1972, c. 1, s. 9 (7).

**Duties of  
chief inquiry  
officer**

(2) The chief inquiry officer shall have general supervision and direction over inquiry officers and the assignment of their duties.

**Hearing**

(3) Where a notification is made under subsection 6 (2), the approving authority shall refer the matter to the chief inquiry officer who shall forthwith assign an inquiry officer who shall fix a time and place for a hearing and who shall cause notice of the hearing to be served upon each party to the inquiry.

**Notice of  
grounds**

(4) At least five days before the date fixed for the hearing, the expropriating authority shall serve upon each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing.

**Inquiry**

(5) The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

**Report**

(6) The inquiry officer shall report to the approving authority a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and his opinion on the merits of the application for approval with his reasons therefor.

**Combined  
inquiries**

(7) The inquiry officer may combine two or more related inquiries and conduct them in all respects and for all purposes as one inquiry.

**Parties**

(8) The expropriating authority, each owner who notifies the approving authority that he desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry.

**Powers and  
duties of  
inquiry  
officer**

(9) The inquiry officer,

(a) may add any owner whose land would be affected by the expropriation of the lands concerned in the

inquiry or any modification thereof as a party to the inquiry;

(b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent;

(c) is not bound by the technical or legal rules of evidence; and

(d) may inspect the lands concerned either alone or in the presence of the parties.

(10) The inquiry officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for his costs of the inquiry not to exceed \$200 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith. R.S.O. 1970, c. 154, s. 7 (2-10). Costs

**8.**—(1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropriation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing. Powers and duties of approving authority

(2) The approving authority shall give written reasons for its decision and shall cause its decision and the reasons therefor to be served upon all the parties within ninety days after the date upon which the report of the inquiry officer is received by the approving authority. Reasons

(3) The approving authority shall certify its approval in the prescribed form. R.S.O. 1970, c. 154, s. 8. Certificate

**9.**—(1) Where a proposed expropriation has been approved under this Act or under the *Ontario Energy Board Act*, the expropriating authority shall register, within three months after the granting of the approval, in the proper land registry office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority. Registration of plan  
R.S.O. 1980, c. 332

(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate Where land required temporarily, etc.

by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority.

Correction  
of errors

(3) In the case of an omission, misstatement or erroneous description in a plan registered under this section, the expropriating authority may register in the proper land registry office a plan replacing or amending the original plan and signed by the expropriating authority and by an Ontario land surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby.

Presumption  
as to  
signing

(4) Where a plan purports to have been signed by an expropriating authority under this section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board. R.S.O. 1970, c. 154, s. 9 (1-4).

Ontario  
Hydro  
R.S.O. 1980,  
c. 384

(5) Where a limited estate, right or interest in land is being taken under the *Power Corporation Act* for an electrical transmission or distribution line carried on single poles, Ontario Hydro may, before registering a plan under subsection (1), register in the proper land registry office a preliminary plan, to be known as and marked "Preliminary Plan" and being a plan with or without local description, signed by the secretary of the Corporation and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a plan registered under subsection (1), but a plan in accordance with subsection (1) shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan. R.S.O. 1970, c. 154, s. 9 (5); 1973, c. 57, s. 19.

Notice of  
expropriation

**10.**—(1) Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of his land, in the prescribed form,

but failure to serve the notice does not invalidate the expropriation.

(2) Where a plan has been registered under section 9, the registered owner may elect, by notice in writing served upon the expropriating authority, within thirty days after the owner was served with the notice under subsection (1), to have the compensation to which he is entitled assessed, <sup>Election of date for compensation</sup>

- (a) where there has been an inquiry, as of the date the notice of hearing before the inquiry officer was served;
- (b) as of the date of the registration of the plan; or
- (c) as of the date on which he was served with the notice of expropriation,

and, where the election is not made within the prescribed time, the owner shall be deemed to have elected to have the compensation assessed as of the date of the registration of the plan.

(3) An expropriating authority may, after it has served notice of expropriation on the owner in possession of the lands expropriated, and with the consent of the said owner, enter on the expropriated lands for the purposes of viewing for appraisal, but, where the consent of the owner is not given, the expropriating authority may apply to the Board which may, by order, authorize the entry upon such terms and conditions as may be specified in the order. <sup>Entry on land for appraisal</sup> R.S.O. 1970, c. 154, s. 10.

**11.** Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case, the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. <sup>Reparation</sup> R.S.O. 1970, c. 154, s. 11.

**12.** Section 21 of the *Ontario Energy Board Act* applies in respect of the use of designated gas storage areas. <sup>Gas storage areas</sup> R.S.O. 1980, c. 332. R.S.O. 1970, c. 154, s. 12.

Compen-  
sation

**13.**—(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act.

Idem

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,

- (a) the market value of the land;
- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. R.S.O. 1970, c. 154, s. 13.

Market  
value

**14.**—(1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

Idem

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.

Idem

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking. R.S.O. 1970, c. 154, s. 14 (1-3).

Idem

(4) In determining the market value of land, no account shall be taken of,

- (a) the special use to which the expropriating authority will put the land;

(b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation; or

(c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. R.S.O. 1970, c. 154, s. 14 (4); 1972, c. 24, s. 1 (1).

(5) Where two or more expropriating authorities, including Her Majesty the Queen in right of Canada, participate in a development or a number of related developments, the Lieutenant Governor in Council may, by regulation, designate such development or developments as a co-operative development and subsection (4) shall apply to the determination of the market value of any land expropriated by any of the participating provincial expropriating authorities for any aspect or part of the co-operative development as if the entire co-operative development was a single development being carried out by that expropriating authority. 1972, c. 24, s. 1 (2), *part*. Co-operative developments

**15.** Upon application therefor, the Board shall, by order, after fixing the market value of lands used for residential purposes of the owner under subsection 14 (1), award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated. R.S.O. 1970, c. 154, s. 15. Increase by Board

**16.** Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately. R.S.O. 1970, c. 154, s. 16. Separate interests

**17.**—(1) In this section, “bonus” means the amount by which the amount secured under a mortgage exceeds the amount actually advanced. Interpretation

(2) Where land is subject to a security interest,

Security holders

(a) the value of the interest of the security holder shall be determined in accordance with this section and section 20 and not otherwise; and

- (b) the market value of the land shall be determined without regard to the interest of the security holder and the amount of such market value plus any damages for injurious affection shall stand in place of the land for the purposes of the security.

Payment  
out of  
market  
value

(3) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security, in accordance with their priorities, whether or not such principal and interest is due, and subject to subsections (4) and (5).

Bonus

(4) Where the land is subject to a mortgage and the amount payable to the mortgagee under subsection (3) is insufficient to satisfy the mortgage in full,

(a) where the mortgage is a purchase-money mortgage, the mortgage shall be deemed to be fully paid, satisfied and discharged for all purposes; and

(b) where the mortgage is not a purchase-money mortgage and includes a bonus,

(i) the amount by which the amount payable to the mortgagee under subsection (3) is insufficient to pay the amount remaining unpaid under the mortgage, or

(ii) the amount of the bonus,

whichever is the lesser, shall be deemed to be fully paid and satisfied for all purposes.

Idem

(5) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus.

Idem

(6) Where land held as security is expropriated in part or is injuriously affected, a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however that the sum so determined shall be reduced by the amount of any payments made to the

security holder by the owner after the date of expropriation or injurious affection. R.S.O. 1970, c. 154, s. 17.

**18.**—(1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including, Allowance for disturbance: owner other than tenant

(a) where the premises taken include the owner's residence,

(i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and

(ii) an allowance for improvements the value of which is not reflected in the market value of the land;

(b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and

(c) relocation costs, including,

(i) the moving costs, and

(ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

(2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection (1) as is appropriate having regard to, tenant

(a) the length of the term;

(b) the portion of the term remaining;

(c) any rights to renew the tenancy or the reasonable prospects of renewal;

(d) in the case of a business, the nature of the business; and

(e) the extent of the tenant's investment in the land. R.S.O. 1970, c. 154, s. 18.

Business  
loss

**19.**—(1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first.

Good will

(2) The Board may, in determining compensation on the application of the expropriating authority or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. R.S.O. 1970, c. 154, s. 19.

Prepayment  
of mortgage

**20.** Where a statutory authority prepays a mortgage in whole or in part, the statutory authority,

(a) shall pay to the mortgagee a bonus in respect of the prepayment amounting to,

(i) three months interest on the amount of principal prepaid at the rate of 6 per cent a year or at such other rate as is prescribed by the Lieutenant Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where,

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and

- (c) shall pay to the mortgagor whose interest is expropriated an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. R.S.O. 1970, c. 154, s. 20.

**21.** A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. Compensation for injurious affection  
R.S.O. 1970, c. 154, s. 21.

**22.**—(1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred. Claim for compensation for injurious affection

(2) Where the person who is injuriously affected is a minor, a mental incompetent or a person incapable of managing his affairs, his claim for compensation shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death, and, if not so made, the right to compensation is forever barred. Idem, where owner under disability  
R.S.O. 1970, c. 154, s. 22.

**23.** The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set off only against the amount of the damages for injurious affection to the owner's land or remaining lands. Set-off against damages  
R.S.O. 1970, c. 154, s. 23.

**24.** A statutory authority has the authority to make and perform an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner and notwithstanding that this Act requires the claim to be determined by the Board. Agreements  
R.S.O. 1970, c. 154, s. 24.

Offer

**25.**—(1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land,

(a) serve upon the registered owner,

(i) an offer of an amount in full compensation for his interest, and

(ii) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection 19 (1); and

(b) offer the registered owner immediate payment of 100 per cent of the amount of the market value of the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon.

Furnishing  
appraisal  
report

(2) The expropriating authority shall base its offer of compensation made under subsection (1) upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made.

Extension  
of time

(3) The expropriating authority may, within the period mentioned in subsection (1) and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending any time referred to in subsection (1), and the judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause (1) (a) upon such conditions as may be specified in the order.

Failure  
to serve

(4) If any registered owner is not served with the offer required to be served on him under subsection (1) within the time limited by subsection (1) or by an order of a judge

under subsection (3) or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. R.S.O. 1970, c. 154, s. 25.

**26.** Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and, in the case of injurious affection, section 22 has been complied with, or, in the case of expropriation, section 25 has been complied with, or the time for complying therewith has expired,

Choice of  
proceedings.  
negotiation  
or arbitration

- (a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that it or he, as the case may be, requires the compensation to be negotiated under section 27; or
- (b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration upon the other of them and upon the Board to have the compensation determined by arbitration. R.S.O. 1970, c. 154, s. 26.

**27.—**(1) The board of negotiation is continued and shall consist of two or more members appointed by the Lieutenant Governor in Council, one of whom may be designated as chairman.

Board of  
negotiation

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board.

Quorum

(3) The board of negotiation may sit at any place in Ontario.

Place of  
sitting

(4) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

Negotiation  
of amount  
of compen-  
sation

(5) Before or during the negotiation proceedings, the board of negotiation shall inspect the land that has been expropriated or injuriously affected.

Inspection  
of land

Where no  
settlement  
reached

(6) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice of arbitration upon the other of them, and upon the Board, stating that it or he, as the case may be, requires the compensation to be determined by arbitration as though the negotiation proceedings had not taken place. R.S.O. 1970, c. 154, s. 27.

Land  
Compensa-  
tion Board

**28.**—(1) The Land Compensation Board is continued and shall be composed of a chairman and such number of vice-chairmen and other members as the Lieutenant Governor in Council considers advisable, all of whom shall be appointed by the Lieutenant Governor in Council.

Qualifications  
of chairman  
and vice-  
chairmen

(2) The chairman and vice-chairmen shall be members of the bar of one of the provinces of Canada.

Quorum

(3) The chairman or a vice-chairman and two other members of the Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board, except that in matters respecting a claim for compensation not exceeding \$1,000, one member of the Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction of the Board.

Powers  
of Board

(4) The Board may,

- (a) administer oaths to witnesses and require them to give evidence under oath;
- (b) issue summonses requiring the attendance of witnesses and the production of documents and things;
- (c) hold sittings at any place in Ontario and in more than one place at the same time.

Enforcement  
of summons

(5) If any person,

- (a) on being duly summoned as a witness before the Board makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer; or
- (c) does any other thing that would, if the Board had been a court of law having power to commit for contempt, have been contempt of that court,

a member of the Board may certify the offence of that person under his hand to the High Court, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

(6) Subject to the approval of the Lieutenant Governor in Council, the Board shall make rules governing its practice and procedure and the exercise of its powers. Practice and procedure

(7) A registrar and such other officers and employees of the Board as are considered necessary shall be appointed under the *Public Service Act*. R.S.O. 1970, c. 154, s. 28. Registrar and employees R.S.O. 1980, c. 418

**29.**—(1) At least fifteen days before the date fixed for the hearing of an application before the Board, any party to the application shall serve upon each other party a copy of any appraisal report upon which it intends to rely at the hearing. Service of appraisal reports

(2) Where it is intended by a party to adduce evidence as to compensation by persons entitled by law or custom to give opinion evidence, not more than three such persons may be called by either party without the leave of the Board. R.S.O. 1970, c. 154, s. 29. Expert evidence as to compensation

**30.**—(1) The Board shall determine any compensation in respect of which a notice of arbitration has been served upon it under section 26 or 27, and, in the absence of agreement, determine any other matter required by this or any other Act to be determined by the Board. Duties of Board

(2) All oral evidence submitted before the Board shall be taken down in writing and, together with such documentary evidence and things as are received in evidence by the Board, form the record. Record

(3) The Board shall prepare and furnish the parties to an application with written reasons for its decision. Reasons

(4) The Board may prepare and periodically publish a summary of such of its decisions and the reasons therefor as the Board considers to be of general public significance. R.S.O. 1970, c. 154, s. 30. Reports

Arbitration  
where no  
expropriation

**31.** Where the owner of land consents to the acquisition of the land by a statutory authority, the statutory authority or the owner, with the consent of the other, may apply to the Board for the determination of the compensation to which the owner would be entitled by this Act if the land were expropriated, and the Board may determine the compensation and the provisions of this Act and the regulations respecting the determination of compensation, hearings and procedures, including costs and appeals, apply thereto in the same manner as if the land had been expropriated and for the purpose, subject to any agreement of the parties, the compensation shall be assessed as of the date on which the consent to the acquisition is given. 1975, c. 19, s. 1.

Stated  
case

**32.**—(1) Where the jurisdiction of the Board or the validity of any decision, order, direction or other act of the Board is called into question by any person affected, the Board, upon the request of such person, shall state a case in writing to the Divisional Court setting forth the material facts and the decision of the court thereon is final and binding.

Order  
directing  
stated case

(2) If the Board refuses to state a case, any person affected may apply to the Divisional Court for an order directing the Board to state a case.

Proceedings  
stayed  
until case  
determined

(3) Pending the decision of the stated case, no further proceedings in respect of the application shall be taken by the Board. R.S.O. 1970, c. 154, s. 31.

Appeals

**33.**—(1) An appeal lies to the Divisional Court from any determination or order of the Board in accordance with the rules of court, except that the appeal may be taken at any time within six weeks from the day the determination or order was served on the parties, and the period of any vacation of the court shall not be reckoned in computing such six weeks. R.S.O. 1970, c. 154, s. 32 (1, 2), *revised*.

Powers of  
court

(2) An appeal under subsection (1) may be made on questions of law or fact or both and the Divisional Court,

(a) may refer any matter back to the Board; or

(b) may make any decision or order that the Board has power to make. R.S.O. 1970, c. 154, s. 32 (3), *revised*.

(3) A judge of the Divisional Court may extend the time for <sup>Extension of time</sup> appeal for such period as he considers proper. R.S.O. 1970, <sup>for appeal</sup> c. 154, s. 32.

**34.**—(1) Where the amount to which an owner is entitled <sup>Costs</sup> upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to a taxing officer of the Supreme Court who shall tax and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 46 (d).

(2) Where the amount to which an owner is entitled upon <sup>Idem</sup> an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to a taxing officer of the Supreme Court who shall tax and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 46 (d) in like manner to the taxation of costs awarded on a party and party basis. 1971, c. 12, s. 2.

**35.**—(1) Subject to subsection 25 (4), the owner of lands <sup>Interest</sup> expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of 6 per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

(2) Subject to subsection (3), where the Board is of the <sup>Variation of interest</sup> opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than 6 per cent a year as appears reasonable.

(3) The interest to which an owner is entitled under sub- <sup>Idem</sup> section (1) shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating

authority, notwithstanding that the compensation as finally determined is less than the offer.

Idem

(4) Where the Board is of the opinion that any delay in determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection (1) at a rate exceeding 6 per cent a year but not exceeding 12 per cent a year. R.S.O. 1970, c. 154, s. 34.

Abatement  
of rent

**36.**—(1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated *pro tanto*, as determined by the Board.

Frustration  
of lease

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. R.S.O. 1970, c. 154, s. 35.

Character  
of compen-  
sation

**37.** Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land. R.S.O. 1970, c. 154, s. 36.

Payment  
of compen-  
sation not  
exceeding  
\$1,000

**38.** Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed \$1,000, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. R.S.O. 1970, c. 154, s. 37.

Represen-  
tative

**39.** Where an owner of the land is unknown, is under a disability or for any other reason is not represented, a judge of the Supreme Court may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person whom he represents. R.S.O. 1970, c. 154, s. 38.

Payment  
into court

**40.**—(1) In any case where the statutory authority considers it advisable, it may without an order, pay the compensation agreed upon or determined into the office of the

Accountant of the Supreme Court together with a sum equal to the interest thereon at the rate of 6 per cent a year for six months.

(2) Upon an application for payment out of court of compensation paid into court, a judge of the Supreme Court may direct that such notice of the application be given by publication or otherwise as he considers proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as he considers reasonable. Payment out of court

(3) Where an order is obtained under subsection (2) in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority. Adjustment of interest

(4) Where unborn issue or an unascertained person or class is interested in compensation paid into court, a judge of the Supreme Court may appoint such person as he considers proper to represent them, and any order made under this section is binding on them. R.S.O. 1970, c. 154, s. 39. Where unborn issue interested

**41.**—(1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection (3), shall take possession of the land on the date specified in the notice. Possession of expropriated land

(2) Subject to subsection (3), the date for possession shall be at least three months after the date of the serving of the notice of possession. Date for possession

(3) A registered owner or an expropriating authority may, upon such notice as the judge may direct, apply to a judge for an adjustment of the date for possession specified in the notice of possession, and the judge, if he considers that under all the circumstances the application should be granted, may order that the date for possession shall be on such earlier or later date as he may specify in the order. R.S.O. 1970, c. 154, s. 40. Application for postponement of possession

**42.**—(1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply to a judge for a warrant directing the sheriff to put down the resistance or opposition. Warrant to put down resistance to entry, etc.

## Hearing

(2) The judge shall, in writing, appoint a time and place for the hearing of the application and in his appointment may direct that it shall be served upon such person as he may prescribe.

## Issue of warrant

(3) On proof of the resistance or opposition, the judge may issue a warrant.

## Return

(4) The sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof. R.S.O. 1970, c. 154, s. 41.

## Abandonment of expropriated land

**43.**—(1) Where, at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriating authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with the notice of expropriation, who may, by election in writing,

- (a) take the land, estate or interest back, in which case he has the right to compensation for consequential damages; or
- (b) require the expropriating authority to retain the land, estate or interest, in which case he has the right to full compensation therefor.

## Revesting

(2) Where all the owners elect to take the land, estate or interest back under clause (1) (a), the expropriating authority may, by an instrument signed by it and registered in the proper land registry office and served on each owner, declare that the land or part thereof is not required and is abandoned by the expropriating authority or that it is intended to retain only such limited estate or interest as is mentioned in the instrument, and thereupon,

- (a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under him; or
- (b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so reverts subject to such limited estate or interest. R.S.O. 1970, c. 154, s. 42.

## Disposal of expropriated lands

**44.** Where lands that have been expropriated and are in the possession of the expropriating authority are found by the expropriating authority to be no longer required for its

purposes, the expropriating authority shall not, without the approval of the approving authority, dispose of the lands without giving the owners from whom the land was taken the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority. R.S.O. 1970, c. 154, s. 43.

**45.** Any application to set aside or quash any proceeding or step taken under this Act shall be made within thirty days after the proceeding or step in respect of which the application is made, but this section does not apply where the applicant was entitled to and not given notice of the proceeding or step or where the proceeding or step was a nullity. R.S.O. 1970, c. 154, s. 44.

Time for  
application

**46.** The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing rates of interest for the purposes of section 20;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing procedures respecting applications to and hearings by inquiry officers and boards of negotiation;
- (d) prescribing tariffs of costs and rules to be applied by taxing officers for the purposes of section 34. R.S.O. 1970, c. 154, s. 45; 1971, c. 12, s. 3.



## CHAPTER 149

## Extra-Judicial Services Act

**1.** In this Act, "judge" means a judge of a court in Ontario, to whom the *Judges Act* (Canada) applies. 1973, Interpretation  
c. 82, s. 1. R.S.C. 1970,  
c. J-1

**2.** Every judge shall be paid out of the Consolidated Annual  
Revenue Fund the annual sum of \$3,000, payable quarterly, compensation  
as compensation for the services that he is called on to render  
by any Act of the Legislature in addition to his ordinary  
duties. R.S.O. 1970, c. 155, s. 1; 1971 (2nd Sess.), c. 15, s. 1;  
1973, c. 82, ss. 1, 2.

**3.**—(1) A judge may act as a conciliator, arbitrator, referee or Extra-  
on a commission of inquiry pursuant to an Act of the Legislature or judicial  
pursuant to an agreement made under any such Act. services  
authorized

(2) Notwithstanding any statutory provision, regulation, Remunera-  
rule, order or agreement, where a judge acts as a con- tion  
ciliator, arbitrator or referee he shall not receive any  
remuneration for his services other than such transportation  
and living allowance as the Lieutenant Governor in Council  
may fix by general or special order. R.S.O. 1970, c. 155,  
s. 2 (2, 3).



## CHAPTER 150

## Factors Act

## 1.—(1) In this Act,

Interpre-  
tation

- (a) “document of title” includes a bill of lading and warehouse receipt as defined by the *Mercantile Law Amendment Act*, a warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented; R.S.O. 1980,  
c. 265
- (b) “goods” includes wares and merchandise;
- (c) “mercantile agent” means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;
- (d) “pledge” includes a contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. Possession  
R.S.O. 1970, c. 156, s. 1.

2.—(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, a sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent is, subject to this Act, as valid as if he were expressly authorized by the owner of the goods to make the disposition, if the person taking under it acts in good faith and has not at the time thereof notice that the person making it has not authority to make it. Powers of  
agent as to  
disposition  
of goods

Revocation  
of consent

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, a sale, pledge or other disposition that would have been valid if the consent had continued, is valid notwithstanding the termination of the consent if the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been terminated.

Derivative  
documents

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

Presumption

(4) For the purposes of this Act, the consent of the owner shall be presumed in the absence of evidence to the contrary. R.S.O. 1970, c. 156, s. 2.

Effect of  
pledge of  
documents  
of title

**3.** A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. R.S.O. 1970, c. 156, s. 3.

Pledge for  
antecedent  
debt

**4.** Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledgor at the time of the pledge. R.S.O. 1970, c. 156, s. 4.

What con-  
sideration  
necessary

**5.** The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent in pursuance of this Act may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration, but, where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee acquires no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. R.S.O. 1970, c. 156, s. 5.

Agreements  
through  
clerks, etc.

**6.** For the purposes of this Act, an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent. R.S.O. 1970, c. 156, s. 6.

**7.**—(1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee has, in respect of advances made in good faith to or for the use of such person, the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

Rights of  
consignee  
making  
advances in  
good faith

(2) Nothing in this section limits or affects the validity of a sale, pledge or disposition by a mercantile agent.

Sale, etc., by  
mercantile  
agent

**8.** Subject to the *Warehouse Receipts Act*, for the purposes of this Act the transfer of a document of title may be by endorsement or, where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to the bearer, then by delivery. R.S.O. 1970, c. 156, s. 8.

Mode of  
transferring  
documents  
R.S.O. 1980,  
c. 528

**9.**—(1) Nothing in this Act authorizes an agent to exceed or depart from his authority as between himself and his principal or exempts him from any liability for so doing.

Liability of  
agent

(2) Nothing in this Act prevents the owner of goods from recovering them from his agent at any time before their sale or pledge, or prevents the owner of goods pledged by an agent from having the right to redeem them at any time before their sale on satisfying the claim for which the goods were pledged and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

Rights of  
owner to  
recover  
possession,  
etc.

(3) Nothing in this Act prevents the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for them, or any part of that price, subject to any right of set-off on the part of the buyer against the agent. R.S.O. 1970, c. 156, s. 9.

Price from  
buyer

**10.** This Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. R.S.O. 1970, c. 156, s. 10.

Amplifica-  
tion of  
powers  
of agents



## CHAPTER 151

## Family Benefits Act

## 1. In this Act,

Interpre-  
tation

- (a) "allowance" means an allowance provided on the basis of need under this Act and the regulations;
- (b) "applicant" means a person who applies, or on whose behalf an application is made, for one or more benefits;
- (c) "beneficiary" means a person on whose behalf a benefit is provided;
- (d) "benefit" means a benefit provided on the basis of need under this Act and the regulations, and includes an allowance;
- (e) "board of review" means the Social Assistance Review Board under the *Ministry of Community and Social Services Act*; R.S.O. 1980,  
c. 273
- (f) "dependent child" means a person residing in Ontario who is supported by his mother, dependent father or the person who stands *in loco parentis* to him and,
  - (i) who is under twenty-one years of age and attends an educational institution of a class defined by the regulations and, if sixteen years of age or over, is making satisfactory progress with his studies, or
  - (ii) who is under eighteen years of age and is not attending school because,
    - a. he is of pre-school age, or
    - b. he is unable to attend school by reason of mental or physical disability;
- (g) "dependent father" means a father who is permanently unemployable by reason of physical or mental disability, and includes a father who is blind or otherwise disabled as defined by the regulations;

- (h) "Director" means the Director of the Income Maintenance Branch of the Ministry of Community and Social Services;
- (i) "field worker" means a person employed as such by the Ministry of Community and Social Services or any other employee of the Ministry whom the Minister designates as such;
- (j) "Minister" means the Minister of Community and Social Services;
- (k) "mother" means the mother of a dependent child;
- (l) "recipient" means a person to whom an allowance is provided;
- (m) "regional administrator" means a regional welfare administrator or any other employee of the Ministry of Community and Social Services whom the Minister designates as such for the purposes of this Act;
- (n) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 157, s. 1; 1971, c. 92, s. 1; 1972, c. 1, s. 19 (3); 1974, c. 98, s. 1.

Agreements  
with  
Canada

R.S.C. 1970,  
c. C-1

**2.** Where the Minister, with the approval of the Lieutenant Governor in Council, has made an agreement on behalf of the Government of Ontario with the Crown in right of Canada respecting the payment by Canada to Ontario, in accordance with the *Canada Assistance Plan* and the regulations made under it, of any portion of any expenditures made by Ontario pursuant to this Act and the regulations thereunder and for any reason the Government of Canada ceases to make the contributions provided for under the *Canada Assistance Plan* or fails to carry out the agreement, all benefits under this Act shall cease. R.S.O. 1970, c. 157, s. 2.

Duties of  
Director

**3.—(1)** The Director shall perform such duties and exercise such powers under this Act as are conferred or imposed by this Act and the regulations. 1971, c. 50, s. 38 (2).

Acting  
Director

(2) Where the Director is absent or there is a vacancy in the office, his powers and duties shall be exercised and performed by such civil servant as the Minister may designate. R.S.O. 1970, c. 157, s. 3 (2).

Delegation  
of power

(3) The Director, with the consent in writing of the Deputy Minister of Community and Social Services, may authorize any employee or class of employee of the Ministry of Com-

munity and Social Services to exercise and discharge any of the powers conferred or the duties imposed upon him under this Act. R.S.O. 1970, c. 157, s. 3 (3); 1971, c. 92, s. 2; 1972, c. 1, s. 19 (3).

(4) Any decision made by a person performing duties or exercising powers of the Director under subsection (2) or (3) shall be deemed to be a decision of the Director for the purposes of this Act. 1971, c. 50, s. 38 (3). Decision of acting Director

4. The Director, every regional administrator and every field worker is, in the performance of his duties under this Act, a commissioner for taking affidavits within the meaning of the *Commissioners for taking Affidavits Act*. R.S.O. 1970, c. 157, s. 4. Power to take affidavits  
R.S.O. 1980, c. 75

5.—(1) An allowance,

No attachment, etc., of allowances

(a) is not subject to alienation or transfer by the recipient; and

(b) is not subject to attachment or seizure in satisfaction of any claim against the recipient. R.S.O. 1970, c. 157, s. 5.

(2) Notwithstanding subsection (1), where a recipient is a tenant of any authority or agency that provides low rental housing accommodation on behalf of the Crown in right of Ontario or on behalf of a municipality, any part of his allowance that does not exceed the amount of his budgetary requirements for shelter as determined in accordance with the regulations, may be paid to the authority or agency in respect of the current rent for which the recipient is liable. 1971, c. 92, s. 3. Payment in respect of rent

6. The receipt of a benefit does not by itself constitute a disqualification of the recipient or beneficiary from voting at any provincial or municipal election. R.S.O. 1970, c. 157, s. 6. Voting rights

7.—(1) An allowance shall and other benefits may be provided in accordance with the regulations to any person in need who is resident in Ontario and, Who entitled to an allowance and other benefits

(a) who has attained the age of sixty-five years and who is not eligible for a pension under the *Old Age Security Act* (Canada); or R.S.C. 1970, c. O-6

(b) who has attained the age of sixty years but has not attained the age of sixty-five years and is a widow, an unmarried woman, or a woman,

R.S.O. 1980,  
cc. 263, 463,  
203, 64

- (i) whose husband is a patient in an institution under the *Mental Hospitals Act*, a sanatorium under the *Sanatoria for Consumptives Act*, a hospital for the chronically ill or a nursing home, or a resident in a home for the aged under the *Homes for the Aged and Rest Homes Act* or the *Charitable Institutions Act*, and has been a patient or resident therein, as the case may be, for a continuous period of six months or more,
  - (ii) whose husband has deserted her for three months or more and his whereabouts is unknown,
  - (iii) whose husband is imprisoned in a penal institution and at the date of application has a term of imprisonment remaining to be served of six months or more,
  - (iv) who is divorced and has not remarried, or
  - (v) who is living separate and apart from her husband and has been living separate and apart from him for a continuous period of five years or more; or
- (c) who has attained the age of eighteen years and is blind or otherwise disabled as defined by the regulations and is not eligible for a pension under the *Old Age Security Act* (Canada); or
- (d) who is a mother with a dependent child and,
- (i) who is a widow, or
  - (ii) whose husband has deserted her for three months or more, or
  - (iii) whose husband has deserted her and was a dependent father at the time of the desertion, or
  - (iv) whose husband is a patient in a sanatorium, hospital or similar institution, or
  - (v) whose husband is imprisoned in a penal institution and at the date of the application has a term of imprisonment remaining to be served of six months or more, or

R.S.C. 1970,  
c. O-6

- (vi) who is divorced from the father of her dependent child and has not remarried, or
- (vii) whose dependent child was born out of wedlock, where the mother is sixteen years or more of age and her dependent child is three months or more of age; or
- (e) who is a dependent father with a dependent child; or
- (f) who is a foster parent with a foster child. R.S.O. 1970, c. 157, s. 7 (1); 1971, c. 50, s. 38 (4); 1971, c. 92, s. 4 (1-4).

(2) Any benefit may be suspended or cancelled if the recipient fails to comply with any requirement of this Act or the regulations. R.S.O. 1970, c. 157, s. 7 (3). Failure to comply with Act and regulations

**8.**—(1) In cases presenting special circumstances and in which investigation shows the advisability of a benefit being provided to an applicant who is not eligible therefor, the Lieutenant Governor in Council may direct that the benefit be provided to the applicant. 1971, c. 92, s. 5. Special cases

(2) The Director may determine the amount of any allowance directed to be provided under subsection (1) and may from time to time vary the amount so determined. Variation of amount

(3) Every person who is provided with an allowance under subsection (1) is eligible for other benefits as if he were eligible under subsection 7 (1). R.S.O. 1970, c. 157, s. 8 (2, 3). Additional benefits

**9.** A benefit shall be provided only after the receipt by the Director of an application therefor in the prescribed form. R.S.O. 1970, c. 157, s. 9. Application

**10.**—(1) Where a recipient dies, his allowance shall be paid to the end of the month in which he died. Where recipient dies

(2) In the case of a recipient,

(a) for whom a committee or trustee is acting; or

(b) who, in the opinion of the Director, is using or is likely to use his allowance otherwise than for his own benefit, or is incapacitated or is incapable of handling his affairs,

Where allowance may be paid to a trustee, etc.

the Director may appoint a person to act for the recipient, and the allowance may be paid for the benefit of the recipient to the committee or trustee or to the person so appointed.

Compensation

(3) A person acting for a recipient under subsection (2) is not entitled to any fee or other compensation or reward or to any reimbursement for any costs or expenses incurred by him. R.S.O. 1970, c. 157, s. 10.

Application for and determination of benefits

**11.** The Director shall,

- (a) receive applications for benefits; and
- (b) in accordance with this Act and the regulations,
  - (i) determine whether any person is entitled to or eligible to receive a benefit,
  - (ii) where an applicant is so entitled or eligible, determine the amount of the allowance or other benefit and direct provision thereof, and
  - (iii) from time to time vary the amount or benefit so determined. 1971, c. 50, s. 38 (5), *part.*

Refusal or suspension of benefit

**12.** Subject to section 13, the Director may refuse to provide or may suspend or cancel a benefit where,

- (a) the applicant or recipient is not or ceases to be entitled thereto, or eligible therefor, under this Act or the regulations;
- (b) the applicant or recipient is absent from Ontario;
- (c) the applicant or recipient fails to provide to the Director or his representative, including a field worker, the information required to determine initial or continuing entitlement to or eligibility for a benefit or the amount of an allowance; or
- (d) any other ground for refusal, suspension or cancellation specified in the regulations exists. 1971, c. 50, s. 38 (5), *part.*

Notice of proposal to suspend, etc.

**13.**—(1) The Director shall not refuse an application for a benefit or suspend or cancel a benefit until more than ten days have elapsed after he has given notice of a proposal to do so, together with his reasons therefor, to the applicant or recipient.

(2) A notice under subsection (1) shall inform the applicant or recipient that he may, within ten days after receipt by him of the notice, file with the Director written representations against the proposed action.

Contents  
of notice

(3) Where an applicant or recipient,

Powers of  
Director

(a) does not file representations with the Director within ten days after receipt by him of a notice under subsection (1); or

(b) has so filed such representations and the Director has given consideration to them,

the Director may carry out the proposed action, and shall give notice of his decision, together with the reasons therefor, to the applicant or recipient.

(4) Where the Director varies the amount of any allowance or benefit, he shall give notice of such variation, together with his reasons therefor, to the recipient.

Notice of  
variation

(5) A notice under subsection (3) or (4) shall inform the applicant or recipient that he is entitled to a hearing by the board of review if he delivers or mails to the chairman of the board a request therefor in the prescribed form within thirty days after receipt by him of the notice, and an applicant or recipient who so mails or delivers such a request is entitled to a hearing by the board.

Notice of  
decision

(6) The board may extend the time for giving notice by an applicant or recipient under subsection (5), either before or after expiration of the time therein specified, where it is satisfied that there are *prima facie* grounds for claiming relief pursuant to a hearing or for appeal and that there are reasonable grounds for applying for the extension.

Extension  
of time for  
requesting  
hearing

(7) A notice by the Director under this section may be given by delivering it personally or by sending it by prepaid mail addressed to the applicant or recipient at his address last known to the Director and, where notice is sent by mail, the notice shall be presumed to have been received on the third day after the day of mailing unless the person to whom notice is given did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice until a later date.

How  
notice may  
be given

(8) A decision of the Director under this section shall be effective from such date either before or after the date of the making of the decision as the Director may fix.

Effective  
date of  
decision

R.S.O. 1980,  
c. 484  
not to apply

(9) The *Statutory Powers Procedure Act* does not apply to proceedings of the Director under this section.

Application  
of section

(10) This section does not apply to refusal of an application for or cancellation of a benefit on the death of the applicant or recipient. 1971, c. 50, s. 38 (5), *part*.

Review

**14.**—(1) Where an applicant or recipient files a request for a hearing in accordance with section 13, the board of review shall fix a time for and hold a hearing to review the decision of the Director and the provisions of section 12 of the *Ministry of Community and Social Services Act* apply with necessary modifications to a hearing and review under this Act by the board of review. 1971, c. 50, s. 38 (7), *part*; 1974, c. 98, s. 3 (1).

R.S.O. 1980,  
c. 273

Interim  
payments

(2) Where a request for a hearing in accordance with section 13 has been made and the board of review is satisfied that there may be financial hardship to the applicant or recipient during the period of time needed for the board to complete its review and make a decision, the board may, before holding the hearing, direct the Director to provide from time to time such amount as the board considers necessary for the maintenance of the applicant or recipient and any of his dependants until the board has completed its review and has given notice of its decision to the applicant or recipient, provided that such amount shall not exceed the maximum amount of an allowance prescribed in the regulations.

R.S.O. 1980,  
c. 484  
not to apply

(3) The *Statutory Powers Procedure Act* does not apply to proceedings of the board of review under subsection (2). 1972, c. 151, s. 1.

Parties

(4) The Director, the applicant or recipient who requested the hearing and such other persons as the board may specify are parties to the proceedings before the board of review. 1971, c. 50, s. 38 (7), *part*.

Submission  
by Director

(5) The Director may make his submissions at a hearing of the board of review in writing, but the applicant or recipient who is a party to the hearing shall be afforded an opportunity to examine before the hearing any such submission or any written or documentary evidence that the Director proposes will be produced or any report the contents of which the Director proposes will be given in evidence at the hearing. 1971, c. 50, s. 38 (7), *part*.

Powers of  
board after  
hearing

(6) Where, after a hearing, the board of review has reviewed the decision of the Director, the board may,

(a) affirm the decision;

- (b) rescind the decision and direct the Director to make any other decision that the Director is authorized to make under this Act and the regulations and as the board considers proper, and for such purpose the board may substitute its opinion for the opinion of the Director; or
- (c) refer the matter back to the Director for reconsideration in accordance with such directions as the board considers proper under this Act and the regulations,

and the Director shall give effect to any directions given by the board under this section.

(7) The board of review may, on application of any party, reconsider and vary any decision made by it after hearing the parties to the proceedings in which the original decision was made, and the provisions of this section apply with necessary modifications to the proceedings on such reconsideration. 1971, c. 50, s. 38 (7), *part*. Variation of decision by board

**15.**—(1) Any party to the proceedings before the board of review under section 14 may appeal from the decision of the board to the Divisional Court on a question that is not a question of fact alone in accordance with the rules of court. Appeal to court

(2) Where any party appeals from a decision of the board of review, the board shall forthwith file with the Registrar of the Supreme Court the record of the proceedings before it in which the decision was made which, together with the transcript of the evidence, if any, before the board if it is not part of the board's record, shall constitute the record in the appeal. Record to be filed in court

(3) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Minister entitled to be heard

(4) On an appeal under this section, the court may affirm the decision of the board of review or may rescind it and refer the matter back to the board or to the Director to be disposed of in accordance with such directions as the court considers proper under this Act and the regulations, and the board or the Director shall give effect to any direction given by the court under this section. 1971, c. 50, s. 38 (7), *part*. Powers of court on appeal

**16.** Notwithstanding that an applicant or recipient has requested a hearing by the board of review under section 14, or has appealed from a decision of the board under section 15, the decision of the Director or of the board, as the case may be, is effective until the decision of the board is made after the Effect of decision pending disposal of appeal

hearing or the decision of the court is made on the appeal, as the case may be. 1971, c. 50, s. 38 (7), *part*.

Recovery  
of over-  
payments,  
etc.

**17.** Notwithstanding section 5 and subject to the regulations, the Director may recover from a recipient any sum paid to him by way of an allowance under this Act or any predecessor Act to which he was not entitled under this Act or such predecessor Act or in excess of any amount to which he was so entitled, whether by reason of non-disclosure of facts, misrepresentation or fraud, or for any other cause disentitling him to such an allowance, by reducing or suspending any allowance payable to the recipient or by proceedings to recover such sum as a debt due to the Crown in any court of competent jurisdiction. 1971, c. 50, s. 38 (7), *part*.

Further  
application

**18.** Notwithstanding any decision of the Director, the board of review or of the court, a further application for a benefit may be made to the Director by the applicant or recipient upon new or other evidence or where material circumstances have changed. 1971, c. 50, s. 38 (7), *part*.

Offences

**19.**—(1) No person shall knowingly obtain or receive a benefit that he is not entitled to obtain or receive under this Act and the regulations.

Idem

(2) No person shall knowingly aid or abet another person to obtain or receive a benefit that such other person is not entitled to obtain or receive under this Act and the regulations.

Idem

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than six months, or to both fine and imprisonment. R.S.O. 1970, c. 157, s. 14.

Regulations

**20.** The Lieutenant Governor in Council may make regulations,

- (a) defining person in need, blind person, disabled person and permanently unemployable person;
- (b) defining classes of educational institutions for the purpose of clause 1 (f);
- (c) prescribing additional duties of the Director;
- (d) prescribing the duties of regional administrators and field workers;
- (e) governing the manner of applying for benefits;

- (f) prescribing the material or proof of any fact, including evidence under oath, that is to be furnished before a benefit is provided or while a benefit is being provided;
- (g) establishing a medical advisory board of one or more persons to advise the Director in the performance of his duties;
- (h) designating benefits or classes of benefits;
- (i) prescribing the maximum amounts of benefits;
- (j) prescribing the manner of computing the amount of benefits;
- (k) prescribing the manner in which and the times and intervals at which an allowance is to be provided;
- (l) providing for the reinstatement and transfer of allowances and other benefits;
- (m) prescribing standards of eligibility for benefits in addition to those mentioned in this Act;
- (n) prescribing classes of persons, in addition to those mentioned in this Act, to whom benefits may be provided;
- (o) requiring and providing for rehabilitation measures;
- (p) providing for the making of investigations for the purposes of this Act of applicants for or recipients or beneficiaries of benefits;
- (q) prescribing forms and providing for their use. R.S.O. 1970, c. 157, s. 15; 1971, c. 50, s. 38 (8-10); 1974, c. 98, s. 4.

**21.** The moneys required to provide benefits and for the <sup>Moneys</sup> administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 157, s. 18.



## CHAPTER 152

## Family Law Reform Act

**W**HEREAS, it is desirable to encourage and strengthen <sup>Preamble</sup> the role of the family in society;

**AND WHEREAS** for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

**AND WHEREAS** in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children:

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

**1. In this Act,**

Interpre-  
tation

- (a) "child" means a child born within or outside marriage, subject to sections 86 and 87 of the *Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; <sup>R.S.O. 1980, c. 66</sup>
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;
- (d) "domestic contract" means a domestic contract as defined in Part IV;

(e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;

(f) "spouse" means either of a man and woman who,

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year. 1978, c. 2, s. 1.

Combining of  
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All  
proceedings  
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity  
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension  
of times

(5) The court may extend any time prescribed by this Act where the court is satisfied that,

- (a) there are *prima facie* grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of children affected. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

(10) Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. 1978, c. 2, s. 2. Registration of orders

## PART I

### FAMILY PROPERTY

3. In this Part, Interpretation

- (a) "court" means a court as defined in section 1 but does not include a provincial court (family division);
- (b) "family assets" means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

- (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (ii) where property owned by a corporation, partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

(c) "property" means real or personal property or any interest therein. 1978, c. 2, s. 3.

Division of  
family  
assets

4.—(1) Subject to subsection (4), where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

Application  
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Effect of  
death of  
spouse

(3) The rights under subsection (1) are personal as between the spouses but any application commenced under subsection

(2) before the death of a spouse may be continued by or against the estate of the deceased spouse.

(4) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to, <sup>Variation of division</sup>

- (a) any agreement other than a domestic contract;
- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(5) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to an equal division of the family assets, subject to the equitable considerations set out in subsections (4) and (6). <sup>Purpose</sup>

(6) The court shall make a division of any property that is not a family asset where, <sup>Property other than family assets</sup>

- (a) a spouse has unreasonably impoverished the family assets; or
  - (b) the result of a division of the family assets would be inequitable in all the circumstances, having regard to,
    - (i) the considerations set out in clauses (4) (a) to (f), and
    - (ii) the effect of the assumption by one spouse of any of the responsibilities set out in subsection (5) on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not a family asset.
- 1978, c. 2, s. 4.

Statement  
of property

**5.**—(1) Where an application is made under section 4, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of all property of the party in the manner and form prescribed by the rules of the court.

Order for  
sealing  
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record. 1978, c. 2, s. 5.

Powers of  
court

**6.** In an application under section 4, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto. 1978, c. 2, s. 6.

Determin-  
ation of  
questions of  
title between  
married  
persons

**7.** Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 6, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;

- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto. 1978, c. 2, s. 7.

**8.** Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

Contribution  
to property

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1978, c. 2, s. 8.

**9.** In or pending an application under section 4, 7 or 8, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property. 1978, c. 2, s. 9.

Interim  
orders for  
preservation

**10.** Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. 1978, c. 2, s. 10.

Realization  
of security

**11.—(1)** The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

Presump-  
tions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property; and

- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause (a).

**Application**

(2) Subsection (1) applies notwithstanding that the event giving rise to the presumption occurred before the 31st day of March, 1978. 1978, c. 2, s. 11.

**Application of Part**

**12.** This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before the 31st day of March, 1978;
- (b) the property in issue was acquired before the 31st day of March, 1978;
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before the 31st day of March, 1978. 1978, c. 2, s. 12.

**Conflict of laws**

**13.—(1)** The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

**Idem**

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4. 1978, c. 2, s. 13.

## PART II

### SUPPORT OBLIGATIONS

**Interpretation**

**14.** In this Part,

- (a) "dependant" means a person to whom another has an obligation to provide support under this Part;
- (b) "spouse" means a spouse as defined in section 1, and in addition includes,
  - (i) either of a man and woman not being married to each other who have cohabited,
    - (A) continuously for a period of not less than five years, or

(B) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

- (ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force. 1978, c. 2, s. 14.

**15.** Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. 1978, c. 2, s. 15.

Obligation of spouses for support

**16.**—(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years.

Obligation of parent to support child

(2) The obligation under subsection (1) does not extend to a child who, being of the age of sixteen years or over, has withdrawn from parental control. 1978, c. 2, s. 16.

Idem

**17.** Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. 1978, c. 2, s. 17.

Obligation of child to support parent

**18.**—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof.

Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection (3).

Applicants

(3) An application for an order for the support of a dependant who is a spouse or a dependent child of the spouse may be made by,

Idem

- (a) the Ministry of Community and Social Services in the name of the Minister; or
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof,

if the Ministry or municipality is providing a benefit under the *Family Benefits Act* or assistance under the *General*

R.S.O. 1980, cc. 151, 188

*Welfare Assistance Act* in respect of the support of the dependant.

Setting aside  
domestic  
contract

(4) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection (1) notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-  
ation of  
amount

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;

- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation;
- (m) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;
- (n) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of eighteen years or over and unable for that reason to withdraw from the charge of his or her parents;
- (o) where the dependant is a spouse, any house-keeping, child care or other domestic service performed by the spouse for the family, in the same way as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings therefrom to the support of the family; and
- (p) any other legal right of the dependant to support other than out of public money.

(6) The obligation to provide support for a spouse exists <sup>Conduct</sup> without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship. 1978, c. 2, s. 18.

**19.—**(1) In an application under section 18, the court <sup>Powers of court</sup> may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses 45 (1) (a) to (d) and subject to subsection 45 (3);
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 18 (3) of any amount in reimbursement for a benefit or assistance referred to therein, including an amount in reimbursement for such benefit or assistance provided before the date of the order;
- (h) the payment of expenses in respect of the pre-natal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of the *Insurance Act* designate the other spouse or a child as the beneficiary irrevocably; and
- (k) the securing of payment under the order, by a charge on property or otherwise.

R.S.O. 1980,  
c. 218.

Limitation  
on  
jurisdiction  
of family  
court

(2) A provincial court (family division) shall not make an order under clause (1) (b), (c), (j) or (k) except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim  
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment  
of support

(4) An order for support is assignable to an agency referred to in subsection 18 (3).

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate. 1978, c. 2, s. 19.

Termination  
of support  
order on  
death

**20.**—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court.

Effect of  
divorce  
proceedings  
R.S.C. 1970.  
c. D-8

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. 1978, c. 2, s. 20.

Idem

**21.**—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 18 (3), discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18.

Review and  
variation  
of orders

(2) An application under subsection (1) shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Court

(3) No application under subsection (1) shall be made within six months after the making of the order for support or the disposition of any other application under subsection (1) in respect of the same order, except by leave of the court.

Limitation  
on appli-  
cations for  
review

(4) This section applies to orders for maintenance or alimony made before the 31st day of March, 1978 or in a proceeding commenced before the 31st day of March, 1978. 1978, c. 2, s. 21.

Existing  
orders

**22.** In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support. 1978, c. 2, s. 22.

Restraining  
orders

Statement  
of financial  
affairs

**23.**—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for  
sealing  
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record. 1978, c. 2, s. 23.

Absconding  
respondent  
or debtor

**24.** Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor. 1978, c. 2, s. 24.

Provisional  
orders

**25.**—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and,

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission  
for hearing

(2) Where a provisional order is made under subsection (1), the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show  
cause

(3) The court to which the documents and records are sent under subsection (2) shall cause them to be served upon

the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper. Where order not confirmed

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy. Certificates as evidence

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. 1978, c. 2, s. 25. Right of appeal

**26.—**(1) Where it appears to a court that,

Access to records

- (a) for the purpose of bringing an application under this Part; or
- (b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts

of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section  
binds Crown

(2) This section binds the Crown in right of Ontario. 1978, c. 2, s. 26.

Enforcement  
of orders by  
family court  
clerk

**27.**—(1) The clerk of the Unified Family Court or of a provincial court (family division) may, upon the filing of such material as is prescribed by the rules of court, enforce an order for support or maintenance enforceable in Ontario, upon the request of,

- (a) a person entitled to support under the order;
- (b) a parent of a person entitled to support under the order;  
or
- (c) a person or agency mentioned in clause 18 (3) (a) or (b). 1979, c. 96, s. 1.

Powers of  
court for  
enforcement

(2) For the purposes of enforcing an order filed under subsection (1), a provincial court (family division) has the power to issue execution and garnishment in accordance with the rules of the court and section 145 of the *Small Claims Courts Act* and subsection 4 (3) of the *Creditors' Relief Act* apply to a garnishment issued by the provincial court (family division).

R.S.O. 1980,  
cc. 476, 103

Crown  
subject to  
attachment  
for support  
R.S.O. 1980,  
c. 393

(3) Notwithstanding section 25 of the *Proceedings Against the Crown Act*, an attachment under subsection 30 (1) and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown. 1978, c. 2, s. 27 (2, 3).

Examination  
of debtor

**28.**—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

- (a) to file a statement of financial information referred to in section 23;
- (b) to submit to an examination as to assets and means; and
- (c) to appear before the court to explain the default.

Compelling  
attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the

debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance. 1978, c. 2, s. 28.

**29.**—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been considered, the court may,

Penalty  
for  
default

- (a) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or
- (b) make such other order as may be made upon summary conviction for an offence that is punishable by imprisonment.

(2) The order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order, including the performance of a community service order. 1978, c. 2, s. 29.

Conditions  
of sentence

**30.**—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of the *Wages Act* does not apply.

Attachment  
of wages

R.S.O. 1980,  
c. 526

(2) Where an application is made under section 21, the court may discharge, vary or suspend any term of an order made under subsection (1).

Variation of  
attachment

(3) An order under subsection (1) has priority over any other seizure or attachment of wages arising before or after the service of the order. 1978, c. 2, s. 30.

Priority  
of order

**31.** Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or may charge any property of the debtor with payment of an amount for the provision of necessities or preventing the dependant from becoming a public charge. 1978, c. 2, s. 31.

Security  
for  
payment

**32.** Where a court orders security for the payment of support under this Part or charges property therewith,

Realization  
of security

the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. 1978, c. 2, s. 32.

Pledging  
credit for  
necessaries

**33.**—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability  
for  
necessaries  
of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessities for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery  
between  
persons  
jointly  
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common  
law  
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband. 1978, c. 2, s. 33.

Order  
restraining  
harassment

**34.** Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate. 1978, c. 2, s. 34.

Custody of  
children

**35.**—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Court

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Interim  
orders

(3) Where an application is made under subsection (1), the court may make such interim order as the court considers appropriate.

Application  
to orders  
under  
R.S.O. 1970,  
c. 128

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*, being chapter 126 of the Revised Statutes of Ontario, 1970. 1978, c. 2, s. 35.

Appeal  
from  
provincial  
court (family  
division)

**36.** An appeal lies from an order of the provincial court (family division) under this Part to the county or district

court in the county or district in which the provincial court (family division) is situated. 1978, c. 2, s. 36.

**37.**—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

Contempt  
of orders of  
provincial  
court (family  
division)

(2) An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. 1978, c. 2, s. 37.

Conditions  
of imprison-  
ment

### PART III

#### MATRIMONIAL HOME

**38.** In this Part, “property” means real or personal property. 1978, c. 2, s. 38.

Interpre-  
tation

**39.**—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

Matrimonial  
home

(2) Subsection (1) applies notwithstanding that its application results in more than one matrimonial home.

More  
than one  
matrimonial  
home

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1).

Ownership  
of shares

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence. 1978, c. 2, s. 39.

Residence  
on farm-  
land, etc.

**40.**—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Right to  
possession

(2) Subject to an order of the court under this or any other Act, and subject to a separation agreement that provides otherwise, a right of a spouse to possession by virtue of subsection (1) ceases upon the spouse ceasing to be a spouse. 1978, c. 2, s. 40.

Termination  
of right to  
possession

Registered  
designation  
of  
matrimonial  
home

**41.—**(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of  
designation

(2) The property that is designated as a matrimonial home under subsection (1) may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation  
of  
designation

(3) The designation of a matrimonial home under subsection (1) is cancelled upon the registration or deposit of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under section 45 cancelling the designation; or
- (d) proof of death of one of the spouses.

Effect of  
cancellation

(4) Upon the cancellation of the designation of a property under subsection (3), the property ceases to be a matrimonial home under section 39.

Revival  
of  
matrimonial  
home

(5) Upon there ceasing to be a designation under subsection (1), section 39 applies in respect of property that is a matrimonial home. 1978, c. 2, s. 41.

Alienation of  
matrimonial  
home

**42.—**(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home; or
- (d) the property is not designated as a matrimonial home under section 41 and an instrument design-

nating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection (1), the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Setting  
aside  
transaction

(3) For the purpose of subsection (2), an affidavit of the person making the disposition or encumbrance,

Proof that  
property  
not a  
matrimonial  
home

- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
- (b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;
- (c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled; or
- (d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of the *Legal Aid Act*. 1978, c. 2, s. 42.

Liens  
arising by  
operation  
of law  
R.S.O. 1980,  
c. 234

**43.**—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Right of  
redemption  
and to  
notice

Service of  
notice

(2) Any notice to which a spouse is entitled by virtue of subsection (1) shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of  
payments  
made by  
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Continuation  
of  
proceedings  
in absence  
of spouse

(4) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection (1) for the purposes of the proceeding, and a notice given under subsection (2) is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse and any final order in the proceeding terminates the rights of the spouse under this section. 1978, c. 2, s. 43.

Powers of  
court  
respecting  
alienation

**44.** The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
  - (i) cannot be found or is not available,
  - (ii) is not capable of giving or withholding consent, or
  - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and

- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 42 (1) and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate. 1978, c. 2, s. 44.

**45.**—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false affidavit is given under subsection 42 (3), direct,
  - (i) the person who swore the false affidavit, or
  - (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate.

(2) An order may be made under subsection (1) for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

Order  
where no  
property  
interest

(3) An order under subsection (1) for exclusive possession may be made only if, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation  
on  
jurisdiction  
of family  
court

(4) A provincial court (family division) shall not make an order under clause 44 (b) or (d) or clause (1) (e) or (f). 1978, c. 2, s. 45.

Variation  
of possessory  
order

**46.**—(1) Upon the application of a person named in an order made under clause 45 (1) (a), (b), (c) or (d) or the personal representative of such person and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of  
conditions  
of sale

(2) Upon the application of a person who is subject to terms and conditions imposed in an order made under clause 44 (b) or his personal representative and where the court is satisfied that the terms and conditions are no longer appropriate, the court may discharge, vary or suspend the terms and conditions. 1978, c. 2, s. 46.

Interim  
order for  
preservation  
of property

**47.** In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents. 1978, c. 2, s. 47.

Registration  
of order  
R.S.O. 1980,  
cc. 445, 230

**48.** An order made under this Part is registrable against land under the *Registry Act* and the *Land Titles Act*. 1978, c. 2, s. 48.

Application  
of Part

**49.**—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before the 31st day of March, 1978;
- (b) the matrimonial home was acquired before the 31st day of March, 1978; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before the 31st day of March, 1978. 1978, c. 2, s. 49.

## PART IV

## DOMESTIC CONTRACTS

**50.** In this Part,Interpre-  
tation

- (a) "cohabitation agreement" means an agreement entered into under section 52;
- (b) "domestic contract" means a marriage contract, separation agreement or cohabitation agreement;
- (c) "marriage contract" means an agreement entered into under section 51;
- (d) "separation agreement" means an agreement entered into under section 53. 1978, c. 2, s. 50.

**51.**--(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

Marriage  
contracts

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void. 1978, c. 2, s. 51.

Rights re  
matrimonial  
home  
excepted

**52.**—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation  
agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and

(d) any other matter in the settlement of their affairs.

Effect of  
marriage on  
agreement

(2) Where the parties to an agreement entered into under subsection (1) subsequently marry, the agreement shall be deemed to be a marriage contract. 1978, c. 2, s. 52.

Separation  
agreements

**53.** A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs. 1978, c. 2, s. 53.

Form of  
contract

**54.—(1)** A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity  
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement  
on behalf of  
mentally  
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person. 1978, c. 2, s. 54.

Contracts  
subject  
to best  
interests  
of child

**55.—(1)** In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

*Dum casta*  
clauses

(2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

(3) A provision in a separation agreement made before <sup>Idem</sup> this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another. 1978, c. 2, s. 55.

**56.** Where a domestic contract provides that specific gifts <sup>Rights of donors of gifts</sup> made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision. 1978, c. 2, s. 56.

**57.** The manner and formalities of making a domestic <sup>Contracts made outside Ontario</sup> contract and its essential validity and effect are governed by the proper law of the contract, except that,

(a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario;

(b) subsection 18 (4) and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and

(c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Ontario. 1978, c. 2, s. 57.

**58.—**(1) Where a man and a woman who are not spouses <sup>Paternity agreements</sup> enter into an agreement for,

(a) the payment of the expenses of prenatal care and birth in respect of a child;

(b) support of a child; or

(c) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection (1) <sup>Absconding respondent</sup> and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the

form prescribed by the rules of the court for the arrest of the respondent.

Capacity of  
a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection (1) that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application  
to  
pre-existing  
agreements

(4) This section applies to agreements referred to in subsection (1) that were made before the 31st day of March, 1978. 1978, c. 2, s. 58.

Application  
of Act to  
pre-existing  
contracts

**59.—**(1) A separation agreement or marriage contract validly made before the 31st day of March, 1978 shall be deemed to be a domestic contract for the purposes of this Act.

Contracts  
entered into  
before  
Part comes  
into force

(2) Where a domestic contract was entered into in accordance with this Part before the 31st day of March, 1978 and,

(a) the contract or any part would have been valid if entered into on or after the 31st day of March, 1978; and

(b) the contract or part was entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before the 31st day of March, 1978.

Idem

(3) Where pursuant to an understanding or agreement entered into before the 31st day of March, 1978 by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract. 1978, c. 2, s. 59.

## PART V

### DEPENDANTS' CLAIM FOR DAMAGES

Right of  
dependants  
to sue in  
tort

**60.—**(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

Damages in  
case of  
injury

(2) The damages recoverable in a claim under subsection (1) may include,

- (a) actual out-of-pocket expenses reasonably incurred for the benefit of the injured person;
- (b) a reasonable allowance for travel expenses actually incurred in visiting the injured person during his treatment or recovery;
- (c) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the injured person, a reasonable allowance for loss of income or the value of the services; and
- (d) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the injured person if the injury had not occurred.

(3) In an action under subsection (1), the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. Contributory negligence

(4) Not more than one action lies under subsection (1) for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. 1978, c. 2, s. 60. One action and limitation of actions

**61.**—(1) An action under subsection 60 (1) in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 60 (1). Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. 1978, c. 2, s. 61. Regulations and procedure in such case

**62.**—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to main- Joining claims

tain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Affidavit

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. 1978, c. 2, s. 62.

How money  
may be paid  
into court

**63.**—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided.

Apportion-  
ment

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled.

When pay-  
ment may  
be  
postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. 1978, c. 2, s. 63.

Assessment  
of damages,  
insurance

**64.**—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral  
expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. 1978, c. 2, s. 64.

## PART VI

### AMENDMENTS TO THE COMMON LAW

Unity of legal  
personality  
abolished

**65.**—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of  
married  
person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person.

Idem

(3) Without limiting the generality of subsections (1) and (2),

- (a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;
- (b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman;
- (c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

(4) The purpose of subsections (1) and (2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections (1) and (2) shall be so construed. 1978, c. 2, s. 65.

**66.** No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1978, c. 2, s. 66.

**67.** No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1978, c. 2, s. 67.

**68.**—(1) Subject to subsection (2), a child who is a minor,

- (a) takes the domicile of his or her parents, where both parents have a common domicile;
- (b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;
- (c) takes the domicile of the father, where the domicile of the child cannot be determined under clause (a) or (b); or
- (d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause (c).

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. 1978, c. 2, s. 68.

**69.**—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery.

Enticement  
and  
harbouring  
of spouse  
abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Loss of  
consortium  
abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Enticement,  
harbouring,  
seduction,  
loss of  
services  
of child  
abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom. 1978, c. 2, s. 69 (1-4).

Dower  
abolished

**70.** The common law right of a widow to dower is abolished. 1978, c. 2, s. 70 (1).

Alimony  
abolished

**71.** The right of a married woman to alimony under any law existing before the 31st day of March, 1978 is abolished. 1978, c. 2, s. 71 (1).

Polygamous  
marriages

**72.** This Act applies to persons whose marriage is actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid. 1978, c. 2, s. 72.

#### GENERAL

Regulations

**73.** The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations. 1978, c. 2, s. 90.

## CHAPTER 153

## Farm Income Stabilization Act

## 1. In this Act,

Interpre-  
tation

- (a) "Commission" means the Farm Income Stabilization Commission of Ontario;
- (b) "farm product" means animals, meats, eggs, poultry, wool, milk, cream, grains, seeds, fruit, vegetables, maple products, honey and tobacco, or any class or part thereof, produced in Ontario;
- (c) "farm product receipts" means the amount ascertained and prescribed by the Commission for the purposes of a plan as representing, for each unit of farm product, the sum of,
  - (i) the market price,
  - (ii) the amount prescribed under clause 6 (1) (c) as a stabilization factor, and
  - (iii) any other moneys received or receivable by producers respecting the farm product to which the plan applies;
- (d) "Fund" means the Ontario Farm Income Stabilization Fund;
- (e) "inspector" means an inspector appointed for the purposes of this Act and includes the chief inspector;
- (f) "Minister" means the Minister of Agriculture and Food;
- (g) "plan" means a voluntary plan for farm income stabilization established under subsection 6 (1);

(h) "regulations" means the regulations made under this Act. 1976, c. 77, s. 1.

Farm Income  
Stabilization  
Commission  
of Ontario  
continued

**2.**—(1) The Farm Income Stabilization Commission of Ontario is continued as a corporation without share capital responsible to the Minister. 1976, c. 77, s. 2 (1), *revised*.

Composition  
of  
Commission

(2) The Commission shall be composed of not fewer than five members who shall be appointed by the Lieutenant Governor in Council.

Nomination  
for  
appointment

(3) Three members may be appointed, one to represent each of the Christian Farmers Federation, the National Farmers Union and the Ontario Federation of Agriculture, on the following basis:

1. Each such organization may, in every year, before the 31st day of March, nominate to the Lieutenant Governor in Council a person for membership on the Commission.
2. The Lieutenant Governor in Council shall appoint such nominees as members of the Commission before the 30th day of April in that year to hold office until the 29th day of April in the year next following.

Chairman  
and vice-  
chairman

(4) The Lieutenant Governor in Council may designate one of the members of the Commission as chairman and one as vice-chairman.

Quorum

(5) Three members of the Commission, of whom one shall be the chairman or vice-chairman, constitute a quorum.

Remunera-  
tion

(6) Members of the Commission who are not officers in the public service of Ontario shall receive such remuneration and expenses as the Lieutenant Governor in Council from time to time determines.

R.S.O. 1980,  
c. 95 does  
not apply

(7) The *Corporations Act* does not apply to the Commission.

Commission  
a Crown  
agency  
R.S.O. 1980,  
c. 106

(8) The Commission is a Crown agency within the meaning of the *Crown Agency Act*.

(9) The failure or refusal to nominate a person by any of the organizations referred to in subsection (3), or the consequent lack of appointment of a person to represent such organization, or the failure or refusal of any member appointed in accordance with subsection (3) to act, does not affect the status of the Commission, the carrying out of its powers and duties under this Act or the validity of any order, direction or regulation made by it. 1976, c. 77, s. 2 (2-9). Powers, etc., of Commission not affected

**3.**—(1) A general manager of the Commission and such other officers, clerks and servants as are considered necessary from time to time for the proper conduct of the business of the Commission may be appointed under the *Public Service Act*. General manager and staff  
R.S.O. 1980, c. 418

(2) The *Public Service Superannuation Act* applies to the permanent staff of the Commission as if it had been designated by the Lieutenant Governor in Council under section 28 of that Act. R.S.O. 1980, c. 419 to apply

(3) The general manager of the Commission shall be the chief administrative officer of the Commission. General manager to be chief administrative officer

(4) The Commission may, subject to the approval of the Minister, engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to or on behalf of the Commission. 1976, c. 77, s. 3. Professional and technical assistance

**4.**—(1) The Minister may appoint a chief inspector and such other inspectors as he considers necessary. Appointment of chief inspector and inspectors

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature or authority of the Minister. Certificate of appointment

(3) Subject to subsections (4), (5), (6) and (7), an inspector may, for the purpose of carrying out his duties under this Act, Powers of inspector

(a) enter any premises, other than a dwelling, owned or occupied by a person enrolled in a plan; and

(b) demand the production or furnishing by the person enrolled in the plan of any books, records or documents or extracts therefrom relating to the farm product to which the plan applies.

When  
powers may  
be exercised

(4) An inspector shall exercise his powers under subsection (3) only during normal business hours, but nothing in this section affects the issuance and execution of a warrant under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,  
c. 400

Production  
and photo-  
copying of  
records, etc.

(5) Where an inspector demands the production or furnishing of books, records or documents, or extracts therefrom, the person having custody thereof shall produce or furnish them to the inspector and the inspector may detain them for the purpose of photocopying them, provided such photocopying is carried out with reasonable dispatch, and the inspector shall forthwith thereafter return them to the person who produced or furnished them.

Certification  
of photocopy

(6) Where a book, record, document or extract has been photocopied under subsection (5), a photocopy purporting to be certified by an inspector to be a copy made pursuant to subsection (5) is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Demand  
to be in  
writing

(7) Where an inspector makes a demand under clause (3)(b), the demand shall be in writing and shall include a statement of the nature of the books, records, documents or extracts required.

Obstruction  
of inspector

(8) No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information.

Offence

(9) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. 1976, c. 77, s. 4.

Functions  
and powers of  
Commission

5. It is the function of the Commission and it has power,

- (a) to administer plans of farm income stabilization established by the regulations;
- (b) to provide for surveys and research relating to farm income stabilization and to obtain statistics for its purposes;
- (c) to administer this Act and the regulations; and
- (d) to exercise such powers and perform such duties as are conferred or imposed on it by or under this or any other Act. 1976, c. 77, s. 5.

6.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commission may make regulations<sup>Regulations by Commission</sup> establishing, amending and revoking voluntary plans for farm income stabilization respecting farm products and governing the terms and conditions of stabilization under any plan and, without restricting the generality of the foregoing, may make regulations,

(a) designating a farm product to which a plan applies;

(b) ascertaining and prescribing, from time to time, the farm product receipts effective for a farm product to which a plan applies;

(c) prescribing, from time to time, the stabilization factor to be included in the farm product receipts effective for a farm product which shall be,

(i) in the case of a farm product named in subsection 2 (1) of the *Agricultural Stabilization Act* (Canada), the moneys paid or payable per unit of farm product under that Act, R.S.C. 1970,  
c. A-9

(ii) in the case of a farm product designated as an agricultural commodity under the *Agricultural Stabilization Act* (Canada), where the percentage prescribed under paragraph 8.2 (1) (b) of that Act is less than ninety, the moneys that would have been paid or payable per unit of farm product under that Act if the percentage prescribed had been ninety,

(iii) in the case of a farm product designated as an agricultural commodity under the *Agricultural Stabilization Act* (Canada), where the percentage prescribed under paragraph 8.2 (1) (b) of that Act is ninety or greater, the moneys paid or payable per unit of farm product under that Act, or

(iv) in the case of a farm product other than those referred to in subclauses (i), (ii) and (iii), an amount that, in the opinion of the Commission, represents the amount of money that would have been payable per unit of farm product if the farm product had been designated as an agricultural commodity under the *Agricultural Stabilization*

*Act* (Canada) and the percentage prescribed under paragraph 8.2 (1) (b) of that *Act* were ninety;

- (d) ascertaining and prescribing, from time to time, a base price respecting the farm product to which a plan applies representing the average price thereof at representative markets as determined by the Commission for the five years immediately preceding the year prescribed in the plan;
- (e) establishing, from time to time, a stabilization price or prices respecting a farm product to which a plan applies obtained by adjusting 95 per cent of the base price thereof by an index calculated in such manner as the Commission may prescribe in the regulations to reflect the estimated cash-cost of production of the farm product in the year for which the stabilization price or prices are established as compared with the average cash-cost of production for the five years immediately preceding that year;
- (f) fixing, from time to time, the fees to be paid by any person enrolled in a plan, and prescribing the times and method of payment;
- (g) prescribing the maximum level of production or marketing for which a person enrolled in a plan is eligible to receive payments under the plan;
- (h) prescribing the minimum level of production or marketing by a person to be eligible to enrol or continue to be enrolled in a plan;
- (i) prescribing, in respect of a farm product to which a plan applies, the proportion of gross income derived from farming that a person is required to have to be eligible to enrol or continue to be enrolled in the plan;
- (j) prescribing terms and conditions to be complied with by applicants for enrolment in a plan;
- (k) prescribing the length of the term of enrolment and conditions of enrolment to be complied with by persons enrolled in a plan;
- (l) requiring applicants for enrolment in a plan or any person enrolled in a plan to furnish such

information, statements or reports as the Commission from time to time requires;

(m) prescribing the time or times at which applications for enrolment in a plan may be made;

(n) prescribing the terms and conditions under which a person enrolled in a plan may withdraw from participation in the plan;

(o) providing for the adjustment of fees payable by any person enrolled in a plan or the adjustment of payments thereto, where the amount of farm product for which fees were paid varies from the amount otherwise eligible for payment or where the person receives moneys respecting the farm product that are not taken into account in calculating the farm product receipts prescribed for the farm product;

(p) prescribing the time or times at which payments shall be made under subsection (4);

(q) prescribing forms and providing for their use and requiring any information given in a form to be verified by statutory declaration.

(2) No person who is not ordinarily a resident of Ontario is eligible to enrol in a plan. Eligibility for enrolment

(3) The Commission shall fix fees to be paid by a person enrolled in a plan at a level that, in its opinion, will return one-third of the amount necessary to maintain the Fund in respect of the farm product for which fees are fixed over the length of the term of enrolment prescribed in the plan. Level at which fees to be fixed

(4) Where, under a plan, the stabilization price exceeds the farm product receipts, the Commission, subject to the regulations, shall, at the time or times prescribed in the regulations, pay to those persons enrolled in the plan the difference between the stabilization price and the farm product receipts respecting any farm product under the plan marketed by such persons. Payment to persons enrolled in plan

(5) Where, under a plan, in any year, the stabilization price exceeds a cost of production figure that is ascertained and prescribed by the Commission, and which may be prescribed in the regulations, the stabilization price, for Stabilization price deemed to be equal to cost of production figure

the purposes of subsection (4), shall be deemed to be equal to that cost of production figure. 1976, c. 77, s. 6.

## Negotiation

**7.**—(1) The Commission shall, respecting any proposed plan or proposed amendments to a plan, negotiate with,

R.S.O. 1980,  
cc. 158, 266

- (a) any local board under the *Farm Products Marketing Act* or marketing board under the *Milk Act* affected thereby;
- (b) the Christian Farmers Federation;
- (c) the National Farmers Union;
- (d) the Ontario Federation of Agriculture; and
- (e) such other organizations or groups of producers as the Commission considers proper.

Powers under  
s. 6 not  
affected by  
failure to  
negotiate

(2) The failure or refusal to negotiate or continue negotiation by any of the organizations referred to in clauses (1) (a), (b), (c), (d) and (e) does not affect the exercise by the Commission or the Lieutenant Governor in Council of the powers contained in section 6. 1976, c. 77, s. 7.

Refusal  
of payment  
after  
hearing

**8.**—(1) The Commission may, after a hearing, cancel the enrolment of any person enrolled in a plan where the Commission finds that he or any other person under his control, in his employ or associated with him in producing the farm product for which he is enrolled, has,

- (a) contravened subsection 4 (8);
- (b) knowingly supplied the Commission with information respecting such farm product that is false or calculated to mislead and that may affect payments to him under the plan; or
- (c) ceased to be qualified to be enrolled in the plan,

and may make such order as to repayment of the whole or any part of fees paid or the payment of any benefits that might otherwise accrue under this Act as the Commission considers just and proper.

R.S.O. 1980,  
c. 484  
applies

(2) The *Statutory Powers Procedure Act* applies to a hearing held under subsection (1).

Person  
deemed  
to have  
withdrawn  
from  
enrolment

(3) Where a person who has been enrolled in a plan fails to pay fees in the amount and manner prescribed

in the regulations, he shall be deemed to have withdrawn from enrolment.

(4) Where a person who was enrolled in a plan has withdrawn or is deemed to have withdrawn from enrolment in the plan or has had his enrolment cancelled, the Commission, subject to the regulations, may at any time enrol or refuse to enrol that person in that or any other plan. 1976, c. 77, s. 8.

Enrolment  
or refusal  
of enrolment

**9.**—(1) All fees fixed in respect of a plan shall be paid to the Commission.

Fees to be  
paid to  
Commission

(2) The Lieutenant Governor in Council may authorize the Treasurer of Ontario to pay to the Commission such amounts out of the moneys appropriated therefor by the Legislature as the Lieutenant Governor in Council may determine. 1976, c. 77, s. 9.

Payment to  
Commission

**10.**—(1) The Commission shall establish and maintain in a chartered bank or the Province of Ontario Savings Office a fund to be known as the "Ontario Farm Income Stabilization Fund", to which shall be credited the moneys received by the Commission under sections 9 and 11.

Ontario  
Farm Income  
Stabilization  
Fund

(2) The Commission shall maintain separate books of account respecting each farm product to which a plan applies.

Books of  
account

(3) The Commission shall pay out of the Fund all moneys required for,

Payments  
out of  
Fund

(a) the payment of moneys under any plan; and

(b) the repayment of loans made under section 11. 1976, c. 77, s. 10.

**11.** The Treasurer of Ontario, with the approval of the Lieutenant Governor in Council and upon such terms and conditions as the Lieutenant Governor in Council may prescribe, may make loans to the Commission and may acquire and hold as evidence thereof bonds, debentures or notes or other evidences of indebtedness of the Commission. 1976, c. 77, s. 11.

Loans to  
Commission

**12.** The Commission shall, at the discretion of the Treasurer of Ontario, pay into the Consolidated Revenue Fund any surplus moneys in the Fund that are not necessary

Surplus

R.S.O. 1980,  
c. 161

for the current requirements of the Commission and section 7 of the *Financial Administration Act* applies thereto. 1976, c. 77, s. 12.

Moneys

**13.**—(1) The moneys required for the purpose of defraying the operating expenses of the Commission shall be paid out of the moneys appropriated by the Legislature for that purpose. 1976, c. 77, s. 13 (1).

Idem

(2) The moneys required for the purposes of this Act shall be paid out of the moneys appropriated therefor by the Legislature. 1976, c. 77, s. 13 (2), *revised*.

Audit

**14.** The accounts and financial transactions of the Commission shall be audited annually by the Provincial Auditor, and a report of the audit shall be made to the Commission and to the Minister. 1976, c. 77, s. 14.

Annual report

**15.**—(1) The Commission shall make an annual report of the affairs of the Commission to the Minister.

Tabling

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Legislative Assembly if it is in session or, if not, at the next ensuing session. 1976, c. 77, s. 15.

Agreements with Government of Canada

**16.** The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements with the Government of Canada to further the carrying out of the intent and purpose of this Act. 1976, c. 77, s. 16.

## CHAPTER 154

## Farm Loans Act

## 1. In this Act,

Interpre-  
tation

- (a) "association" means a farm loan association incorporated under this Act;
- (b) "Commissioner" means the Commissioner of Agricultural Loans;
- (c) "directors" means the directors of a farm loan association;
- (d) "local municipality" means a township or village;
- (e) "secretary-treasurer" means the secretary-treasurer of a farm loan association;
- (f) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 158, s. 1; 1972, c. 3, s. 17 (1).

2. A farm loan association may be formed for the purpose of loaning money under this Act in any part of Ontario described in the certificate of incorporation. R.S.O. 1970, c. 158, s. 2.

Farm loan  
association

3. Where it is desired to form such an association, an application in such form as is prescribed in the regulations and describing the territory for which the association is to be formed shall be forwarded to the Commissioner at Toronto. R.S.O. 1970, c. 158, s. 3.

Application

4.—(1) The Commissioner shall name a person to act temporarily as secretary-treasurer of the proposed association, and shall instruct the secretary-treasurer to call a meeting of those interested.

Temporary  
secretary-  
treasurer

(2) At such meeting five provisional directors shall be elected, and the work of organization shall be completed under their direction. R.S.O. 1970, c. 158, s. 4.

Provisional  
directors

5. Any person resident in the territory described in the application and actually engaged in farming operations, or

Persons  
eligible for  
membership

agreeing to become so engaged within one year, is eligible for membership. R.S.O. 1970, c. 158, s. 5.

Certificate  
of incor-  
poration

**6.** No association shall be deemed to be incorporated until a certificate of incorporation setting forth that all the terms of this Act have been complied with has been issued by the Commissioner as hereinafter provided. R.S.O. 1970, c. 158, s. 6.

Capital  
stock

**7.—(1)** The amount of the capital stock of the association shall be fixed by the Commissioner and shall be made up as follows:

1. One share of par value of \$100 to be subscribed by each member.
2. Shares of par value of \$100 to the extent of one-half of the total amount subscribed by individual members subscribed for by the corporations of local municipalities in the territory for which the association is formed.
3. Shares of par value of \$100 each to the extent of one-half of the total amount subscribed by individual members subscribed for by the Province of Ontario.

Minimum  
number of  
members

**(2)** No association shall be incorporated or carry on business until at least thirty members have subscribed for stock in the association. R.S.O. 1970, c. 158, s. 7.

Terms of  
payment

**8.** Each member shall pay 10 per cent of the par value of his stock at the time of subscription and the balance when called upon, and payments by municipal corporations and the Province of Ontario shall be made at the same time and in the same proportions as those of individual members. R.S.O. 1970, c. 158, s. 8.

Council of  
local  
municipality  
may  
subscribe

**9.** The council of a local municipality may in its discretion by by-law subscribe to the stock of any association incorporated under this Act to the extent and upon the terms herein provided, and may pay for the stock subscribed for and take all steps incidental thereto and to the carrying out of the provisions of this Act and may issue debentures of the corporation payable within a period not exceeding ten years for the amount of such subscription in the manner provided by the *Municipal Act*, but it is not necessary to submit any by-law for the issue of such debentures to the electors qualified to vote on money by-laws nor to observe the other formalities in relation thereto prescribed by the *Municipal Act*. R.S.O. 1970, c. 158, s. 9.

R.S.O. 1980,  
c. 302

**10.** In the event of two or more municipalities combining in such subscription, the stock held by them may be held in the joint names of the corporations or severally in such proportions as they agree upon, and may be acted upon in such joint or separate manner as they from time to time agree upon. R.S.O. 1970, c. 158, s. 10.

Where two or more municipalities combine

**11.** Upon receipt of a report from the Commissioner that an association is being formed in accordance with this Act, the Treasurer, with the approval of the Lieutenant Governor in Council, may subscribe for shares in accordance with paragraph 3 of subsection 7 (1), and all necessary payments shall be made out of the Consolidated Revenue Fund or in bonds or other securities issued or guaranteed by the Province of Ontario. R.S.O. 1970, c. 158, s. 11.

Treasurer, when may subscribe

**12.—**(1) To represent the stock subscribed and to assist generally in the conduct of the business of the association, two directors shall be appointed by a municipal corporation subscribing, or if more than one municipal corporation is subscribing, one director shall be appointed by each corporation and in every case two directors shall be appointed by the Lieutenant Governor in Council.

Appointment of directors

(2) Directors named under this section shall serve for a period of two years or until their successors are appointed. R.S.O. 1970, c. 158, s. 12.

Directors' term of office

**13.** Shares owned by members may be transferred to other members or purchased by the association only with the approval of the board of directors. R.S.O. 1970, c. 158, s. 13.

Transfer of shares

**14.—**(1) The secretary-treasurer is responsible for all moneys or securities realized by the sale of capital stock and such moneys or securities shall, where not needed for liabilities, be invested in bonds or debentures of or guaranteed by a government or municipality, as may be ordered by the directors with the approval of the Commissioner.

When moneys to be invested by secretary-treasurer

(2) The secretary-treasurer shall give such security for the due performance of the duties of his office and for the safe custody of the moneys coming to his hands as is prescribed by the regulations, and he shall at all times keep all moneys and securities in his hands separate from his own moneys and shall deposit them in a chartered bank to the credit of the association. R.S.O. 1970, c. 158, s. 14.

Secretary-treasurer to give security

**15.** When capital stock has been arranged for as prescribed, the secretary-treasurer shall call a meeting of the members and the directors named by the subscribing muni-

Organization of association

cipality and the Province of Ontario and such meeting shall select the proposed corporate name, to wit "Farm Loans Association of (*insert name*)", and shall complete the organization of the association. R.S.O. 1970, c. 158, s. 15.

**Officers**

**16.**—(1) The subscribing members shall, at such meeting, from among themselves elect a president, vice-president and one director who, with the directors named by the municipality and the Province of Ontario, constitute the board of directors.

**Term of office**

(2) The president, vice-president and director shall hold office for one year or until their successors are elected. R.S.O. 1970, c. 158, s. 16.

**Application for certificate of incorporation**

**17.**—(1) The secretary-treasurer, immediately after the holding of the meeting, shall advise the Commissioner that organization has been completed and shall give the names of officers and directors and make application for a certificate of incorporation.

**Association, when to be deemed incorporated**

(2) Upon receipt of such application, the Commissioner may issue a certificate of incorporation to the association in the name approved and thereupon the association is a body corporate and shall for all purposes be deemed to be duly incorporated and may carry on business and exercise all the powers conferred upon it by this Act.

**Vacancy in directorate**

(3) Upon a vacancy occurring among the directors, the vacancy shall be filled by the body appointing the director whose seat has become vacant.

**Quorum**

(4) Two of the directors elected by the members and three of the directors appointed by the municipality and the Province of Ontario constitute a quorum of the directors. R.S.O. 1970, c. 158, s. 17.

**Appointment of secretary-treasurer**

**18.** The board of directors is responsible for carrying on the business of the association, shall appoint a secretary-treasurer, who may or may not be a member, and has power to fix the duties of all officers and, subject to the regulations, make rules governing procedure at all meetings of the directors or the association and the conduct of the association generally. R.S.O. 1970, c. 158, s. 18.

**Officers and directors to be paid only for disbursements**

**19.** No officer or director, except the secretary, shall be paid any salary or fee by the association, other than actual disbursements necessarily made in attending to the business of the association and approved by the directors. R.S.O. 1970, c. 158, s. 19.

**20.** An annual meeting of the association shall be held once in every year, between the 1st day of January and the 1st day of March, of which due notice shall be given by the secretary by letters addressed to each subscriber and director, and at such meeting reports shall be presented by the officers showing fully the business done by the association during the last calendar year. R.S.O. 1970, c. 158, s. 20.

Annual  
meeting

**21.** After the incorporation of an association, additional members may be admitted with the approval of the directors and under such conditions as the directors prescribe. R.S.O. 1970, c. 158, s. 21.

Additional  
members,  
when  
admitted

**22.** The object of an association incorporated under this Act is to promote individual prosperity and agricultural development by securing for members short-term loans for current expenditures. R.S.O. 1970, c. 158, s. 22.

Object

**23.** When an association desires to secure credit for its members, the secretary shall advise the Commissioner who shall inform the association as to the facilities available and the steps to be taken in furtherance of this Act. R.S.O. 1970, c. 158, s. 23.

Where  
association  
desires  
credit

**24.**—(1) A member of an association is entitled to apply for a short-term loan for any one or more of the following purposes:

Short-term  
loans may  
be made,  
for what  
purposes

1. Purchase of seed, feed, fertilizer and other supplies.
2. Purchase of implements and machinery.
3. Purchase of cattle, horses, sheep, pigs and poultry.
4. Payment of the cost of carrying on any farming, ranching, dairying or other agricultural operations.
5. Payment of the cost of preparing land for cultivation.
6. Fire or life insurance where required, in the opinion of the directors, as collateral security for a loan made for any of the above-mentioned purposes.

(2) No loan to a member of an association shall exceed in amount \$2,000, but an additional loan or loans may be made to a member if the total amount of indebtedness outstanding on account of the member does not at any time exceed \$2,000. R.S.O. 1970, c. 158, s. 24.

Limit of  
amount of  
loan

Application  
for loan,  
what to  
include

**25.** A member of an association desiring a loan shall sign an application in the form prescribed, stating the amount required and the purpose for which it is to be used, and agreeing to repay the loan at a date therein to be named, which shall not be later than the 31st day of December next thereafter, together with interest at the rates fixed in accordance with this Act. R.S.O. 1970, c. 158, s. 25.

Approval of  
directors

**26.** All such applications shall be delivered to the secretary and shall be presented by him to the directors at the next following meeting, and the directors shall determine whether an application shall be approved, and may approve it in part or on such terms as they consider proper, and may demand such security from the applicant as they think necessary, and in the event of the application being approved in part only or being varied, a new application shall be signed by the applicant in accordance with the approval and the former application cancelled. R.S.O. 1970, c. 158, s. 26.

Form of  
approval

**27.**—(1) Where an application has been finally approved by the directors, the approval shall be certified on the application in the form prescribed and shall be signed by the secretary and by the president or vice-president, and a record of all applications approved shall be entered in the minutes of the association, and one duplicate or copy thereof shall be delivered to the applicant and another duplicate or copy retained by the association.

Idem

(2) In the event of the absence from any cause of any such officers, the directors may by resolution authorize any other officer to sign the approval in his stead. R.S.O. 1970, c. 158, s. 27.

Original  
copy of  
application  
with ap-  
proval to be  
delivered  
to bank

**28.** Whenever an application has been duly made and approved, the secretary shall deliver the original thereof to such bank or person as the directors have authorized, and shall settle the times and conditions at and upon which the amount shall be advanced, and, upon the same being agreed to by the lender, shall advise the applicant and shall enter a record thereof in the books of the association. R.S.O. 1970, c. 158, s. 28.

Note may be  
required

**29.** Before any moneys are advanced under an approved application, the lender or association may require the borrower to sign a note or notes for the amount of the moneys to be advanced, and the association shall endorse such note or notes, but the terms of such notes shall not vary in any way from the terms of the approved application or from the provisions of this Act, and the secretary is hereby authorized to endorse such notes on behalf of the association. R.S.O. 1970, c. 158, s. 29.

**30.** The rate of interest payable by a borrower on a <sup>Interest</sup> loan guaranteed by an association shall not exceed 7 per cent per annum, and out of the interest paid one-seventh shall be paid to the association for the purposes hereinafter mentioned, which share of interest shall be paid by the lender to the association as soon as the loan and all interest thereon has been received by him and the security given to the lender shall not be surrendered until all such interest charges have been paid. R.S.O. 1970, c. 158, s. 30.

**31.** In the event of a borrower not being able to repay <sup>Renewal</sup> the amount of his loan on or before the 31st day of December for reasons that appear to the directors to be justifiable, or on account of the loan having been granted for purposes not productive within one year, the directors may, on the application of the borrower, authorize a renewal of any portion of the loan until such further time as is agreed, but not later than one year next after the maturity of the previous loan, and the application for such renewal loan shall be in the same form as for an original loan, except that it shall be stamped with the word "Renewal", and shall be kept distinct from any new application made by the same borrower, but in all other respects the provisions of this Act relating to applications and the endorsements thereof, and the rights and liabilities arising thereunder, are applicable to such renewals. R.S.O. 1970, c. 158, s. 31.

**32.—(1)** In the event of a borrower failing to pay the <sup>Failure of borrower to make payments</sup> amount of his loan, or to renew it within one month from its due date, the lender may demand payment of the amount owing, with interest thereon to date of payment, and the association shall within fifteen days from the receipt of such demand provide for the payment of such amount.

**(2)** If on the expiry of the fifteen days payment has not <sup>Where payment not made</sup> been made to the lender, the balance unpaid on the subscriptions of the several members, the municipal corporation and the Province, forthwith becomes due and payable, and the liability of the municipal corporation and of the Province respectively to make payment thereof to the amount of such demand is not contingent upon payment by the members or any of them.

**(3)** Upon payment, the lender shall deliver to the asso- <sup>Where payment made</sup> ciation all securities held by him for the loan or any part thereof, and the association is entitled to recover the amount so paid from the borrower by any means authorized by this Act or by any other statute or law applicable thereto. R.S.O. 1970, c. 158, s. 32.

Monthly  
return

**33.** Every lender from whom loans are obtained by an association under this Act shall forward to the Commissioner a monthly return showing each loan made by it under this Act, and the amount advanced at the date of such return and also showing all loans, if any, then past due. R.S.O. 1970, c. 158, s. 33.

Security;  
goods  
purchased  
to be  
subject  
to lien

**34.** All animals, machinery, goods or personal property of any kind purchased or partly purchased with the proceeds of a loan obtained under this Act, or for the purchase of which a loan has been granted, together with the offspring of such animals and the crops or other products grown upon any lands for the working of which such loan has been made or used, are subject to a lien for the amount of the loan in favour of the association approving without any further writing or act by the borrower, and none of such property shall be removed from the premises of the borrower or beyond the limits of the district in which the association is authorized to carry on business during the currency of such loan without the consent of the secretary, except for the purpose of sale, and all proceeds of the sale of any of such property shall without delay be paid to the lender on account of the loan. R.S.O. 1970, c. 158, s. 34.

Additional  
security

**35.**—(1) The directors may, before granting an application, require such further security as they think necessary, and upon such terms and conditions as they may approve.

Form and  
assignment  
of security

(2) The directors are hereby authorized to take in the name of the association any form of security and to exercise all rights thereunder, and may assign such security, with all rights appertaining thereto, to the lender.

Powers  
interpreted

(3) The powers of the directors as to taking security in the name of the association includes the power to take, by way of additional security, mortgages on real or personal property or assignments of agreements of sale thereof, and to exercise all rights conferred by such securities. R.S.O. 1970, c. 158, s. 35.

When asso-  
ciation has  
lien on  
personal  
property of  
borrower

**36.**—(1) The association has a lien or charge on all the personal property of the borrower for securing repayment of any such loan, upon filing a certificate of the secretary of the association in the office of the clerk of the county or district court of the county or district in which is situated the land upon which the borrower carries on the operations for which the loan was made to him, showing the amount of the loan and the name and address of the borrower.

(2) The certificate shall be registered within five days from the date thereof and has effect only from the date of registration. Registration of certificate

(3) The registration in the same office of a subsequent certificate signed by the secretary of the association, showing repayment of such loan, operates as a discharge of such lien. Discharge of lien

(4) The clerk of the county or district court shall register the certificate and discharge without the payment of any fee therefor. No charge for registration R.S.O. 1970, c. 158, s. 36.

**37.** The bank or person making a loan or a representative and the association endorsing a loan or an officer or director thereof have the right at any time during the currency of the loan to enter on the premises of the borrower and inquire into the manner in which the borrower is carrying on such farming or other operations as are required for the proper development of the purposes for which the loan was granted, or to ascertain that the terms of the loan are being carried out, or that the security for the loan is in good condition and on the premises of the borrower in the district. Right of entry of bank or person making loan R.S.O. 1970, c. 158, s. 37.

**38.** In the event of the death, insolvency or mental illness of the borrower, or of his deserting the premises, or of his failure to carry out the purposes of the loan, the directors of the association, or any three of them, may apply to a county court judge for an order placing the association, or a person named by it, in possession of all goods, animals or property covered by any security given under this Act, and of any or all other property, real or personal, of the borrower lying within the municipality that may be required for the proper care, use, or preservation of the security, and the judge has power, after such notice to the borrower as he thinks reasonable, or without notice, to make an order for the purposes aforesaid and to authorize such persons as he names to carry out such order. Death, insolvency, or mental illness of borrower R.S.O. 1970, c. 158, s. 38.

**39.** No person who has obtained a loan under this Act, any part of which remains unpaid, shall dispose of or attempt to dispose of his stock, chattels or crops otherwise than in the ordinary course of business. Disposing of property covered by lien R.S.O. 1970, c. 158, s. 39.

**40.** The borrower is personally liable for the payment of the amount of any loan made under this Act, or any balance thereof, and for all interest charges and costs of collection thereof. Borrower personally liable R.S.O. 1970, c. 158, s. 40.

Misapplication of funds not to affect security

**41.** It is not incumbent on any person or bank making a loan under this Act to see to the due application of the moneys loaned, and the misapplication or non-application of such moneys does not affect the security for the loan. R.S.O. 1970, c. 158, s. 41.

Books and records to be open to inspection

**42.** The Commissioner has general supervision of all associations, and all books and records of any association shall be open at all times to inspection and audit by the Commissioner or such other person as is named by the Lieutenant Governor in Council. R.S.O. 1970, c. 158, s. 43.

Application of moneys

**43.** The moneys received by an association from the share of interest received by it shall be applied,

- (a) in payment of the necessary expenses of the association;
- (b) in payment of a dividend on the paid-up stock of not more than 6 per cent per annum;
- (c) in accumulating a reserve that may, in the discretion of the directors, be invested in the same manner as the capital stock,

and in the event of the dissolution of an association, any accumulated reserve shall be divided among the subscribers in proportion to the amount of the capital stock respectively held by them. R.S.O. 1970, c. 158, s. 44.

Application to secretary for information regarding a borrower

**44.** Any person dealing with a borrower or a person believed to be a borrower from an association, and proposing to sell goods on credit or to lend money or make advances to such person, may apply to the secretary of the association for information as to the advances that have been made or authorized to such person and the purposes thereof, and the secretary, on being satisfied of the *bona fides* of the request, shall furnish any information shown on the records of the association at the date of the request. R.S.O. 1970, c. 158, s. 45.

Meetings

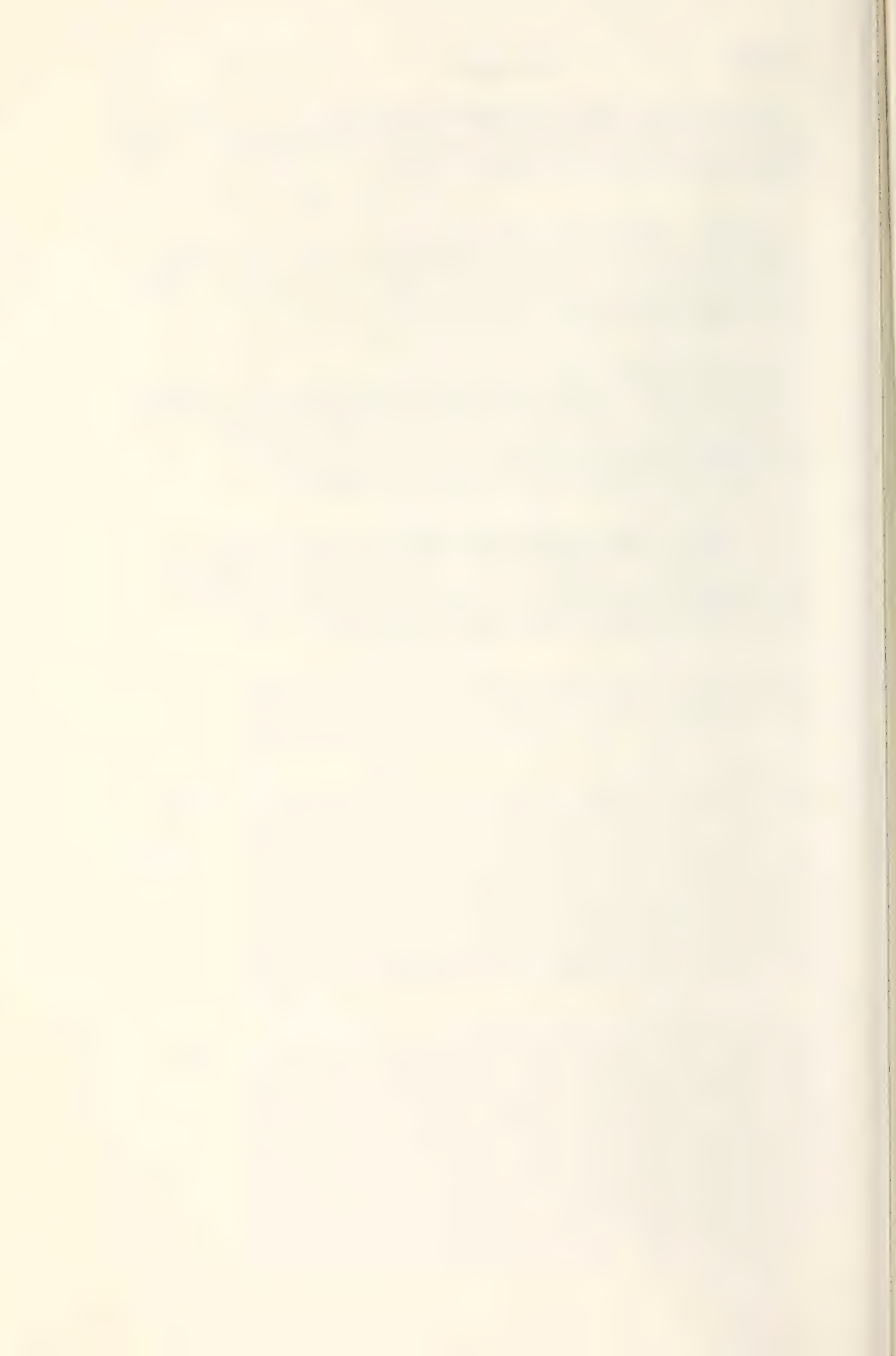
**45.** The directors shall hold one or more meetings in each of the months of March and April in every year for the consideration of applications for loans, and shall hold such further meetings as may be required from time to time on the call of the president or on the written request of any three members of the board delivered to the secretary, and the directors shall also hold one or more meetings in the month of January in each year for the consideration of loans, if any, on which the full amount has not been paid prior to the 31st day of December preceding. R.S.O. 1970, c. 158, s. 46.

**46.** The Lieutenant Governor in Council may make Regulations regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 158, s. 47.

**47.** The Treasurer may, with the approval of the Lieutenant Governor in Council, lend money to any such association for the purpose of assisting it to carry on its business on such terms as to interest, repayment and security as are agreed upon. R.S.O. 1970, c. 158, s. 48.

**48.** The Treasurer may, with the approval of the Lieutenant Governor in Council, enter into agreements and guarantees with banks, loan companies or other corporations for securing moneys for the purposes of associations, and may make provision for such rates of interest and conditions of repayment as seem proper. R.S.O. 1970, c. 158, s. 49.

**49.** Where it appears to the Lieutenant Governor in Council that an association has ceased to operate, he may dissolve it, appoint a liquidator of its estate and effects, and make such provisions as he considers appropriate for the disposal of its property and records. R.S.O. 1970, c. 158, s. 50.



## CHAPTER 155

## Farm Loans Adjustment Act

## 1. In this Act,

Interpre-  
tation

(a) "Commissioner" means the Commissioner of Agricultural Loans;

(b) "judge" means a judge of a county or district court;

(c) "loan" means a loan made under the *Farm Loans Act* for farming or agricultural purposes and includes an amount owing under an agreement for sale made pursuant to such Act; R.S.O. 1980,  
c. 154

(d) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 159, s. 1; 1972, c. 3,  
s. 17 (1).

2.—(1) A person who is liable for the payment of a loan may make application to the Commissioner to have the loan reviewed by a judge for the purpose of obtaining any or all of the following relief: Application  
for review  
of loan

1. A reduction in the amount of the principal outstanding.
2. A reduction in the amount of the arrears of interest.
3. An extension of the time for payment of the loan.

(2) Every such application shall be in the prescribed form verified under oath and shall be sent in duplicate by registered mail to the Commissioner. Idem R.S.O. 1970, c. 159,  
s. 2.

3.—(1) Within ninety days of receipt of an application under section 2, the Commissioner shall apply to a judge for an appointment for hearing and shall furnish the judge with a copy of the application and of any further material that he considers advisable and the judge shall appoint a time and place for the hearing. Appoint-  
ment for  
hearing

(2) The Commissioner shall cause a copy of the appointment for hearing and of any material that has been fur- Copy of  
appointment

nished to the judge to be sent by registered mail to the applicant at least thirty days before the day named for the hearing. R.S.O. 1970, c. 159, s. 3.

Order  
of judge

**4.**—(1) Upon the hearing, the judge shall consider the representations of the applicant and the Commissioner and the evidence adduced and may make such order granting the relief applied for or dismissing the application as he considers proper having regard to,

- (a) the nature and value of the land in respect of which the loan is made and the revenue that it is capable of producing;
- (b) the amount and nature of encumbrances against the land;
- (c) the financial and domestic obligations of the applicant and the income of the applicant from all sources; and
- (d) all other relevant circumstances,

and the order of the judge is final, subject only to such further order as may be made on any subsequent application. R.S.O. 1970, c. 159, s. 4 (1).

Powers  
of judge

R.S.O. 1980,  
c. 411

(2) Upon the hearing and review, the judge has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such hearing as if it were an inquiry under that Act, and he may hear the submissions and evidence of such persons as he considers advisable. R.S.O. 1970, c. 159, s. 4 (2); 1971, c. 49, s. 18, *revised*.

Subsequent  
application

**5.** A subsequent application in respect of any loan may be made after the expiration of a period of two years from the date of an order made upon a previous application. R.S.O. 1970, c. 159, s. 5.

Powers of  
Treasurer

**6.** Subject to the approval of the Lieutenant Governor in Council, the Treasurer may,

- (a) prescribe the form of application for relief and such other forms as he considers necessary;
- (b) provide for payment of the expenses of every judge to whom an application is made;
- (c) make such regulations as he considers necessary respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 159, s. 6.

## CHAPTER 156

## Farm Products Containers Act

## 1. In this Act,

Interpre-  
tation

- (a) "association" means The Ontario Bee-keepers' Association or The Ontario Fruit and Vegetable Growers' Association;
- (b) "container" includes any bag, basket, box, can, crate or other receptacle used or suitable for use in the marketing of honey, fruit or vegetables;
- (c) "licence" means a licence provided for under an order;
- (d) "manufacturer" means a person engaged in the business of manufacturing or selling containers used or suitable for use in the marketing of honey, fruit or vegetables;
- (e) "Minister" means the Minister of Agriculture and Food;
- (f) "order" means an order made under section 2;
- (g) "producer" means a person engaged in the production of honey, fruit or vegetables and includes a person engaged in the handling, packing, processing, shipping, transporting, purchasing or selling of honey, fruit or vegetables;
- (h) "product" means honey or any fruit or vegetable.  
R.S.O. 1970, c. 160, s. 1.

2. When the Minister receives from an association a request asking that, for the purpose of defraying the expenses of the association, every producer of any product specified in the request who purchases containers therefor be required to be licensed and to pay licence fees, the Minister, subject to the approval of the Lieutenant Governor in Council, may, if he is of the opinion that the association is fairly representative of such producers, make an order,

Establish-  
ment of  
fund

- (a) providing for the licensing of every such producer and requiring him to pay licence fees through the manufacturer to the association and fixing the amount of such fees and the times of payment thereof;
- (b) exempting any class of producer from the order;
- (c) requiring every manufacturer who sells containers either directly or indirectly to producers to collect the licence fees from the producers and to pay them to the association;
- (d) prohibiting the association from using any licence fees for the retail or wholesale distribution or processing of the product. R.S.O. 1970, c. 160, s. 2.

**Offence**

**3.** Every person who contravenes any of the provisions of an order of the Minister made under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$50 for a first offence and to a fine of not less than \$50 and not more than \$200 for a subsequent offence. R.S.O. 1970, c. 160, s. 3.

## CHAPTER 157

## Farm Products Grades and Sales Act

## 1. In this Act,

Interpre-  
tation

- (a) "Arbitration Board" means the Produce Arbitration Board;
- (b) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980,  
c. 270
- (c) "contracting party" means,
  - (i) a producer of farm products who has entered into a contract with a licensee, or
  - (ii) a licensee who has entered into a contract with a producer of farm products,respecting the marketing of any farm product;
- (d) "controlled-atmosphere fruit" means fruit that has been stored in a sealed compartment of a controlled-atmosphere storage plant for a period of at least ninety days from the date of the sealing thereof where the oxygen content of the air in the sealed compartment did not exceed 5 per cent during the storage;
- (e) "controlled-atmosphere storage plant" means premises and buildings constructed and equipped for cold storage of fruit in sealed compartments within which the oxygen content of the air is mechanically controlled;
- (f) "dealer" means a person who purchases or accepts for sale a farm product from the producer thereof, other than a person who purchases a farm product for his own consumption;
- (g) "Director" means the Director appointed under this Act;
- (h) "farm product" means such animals, animal products, Christmas trees, fruit, fruit products, grains, honey,

maple products, seeds, tobacco, vegetables, vegetable products, wood or any class thereof and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;

- (i) "grade" means, except in subsection 2 (4), a grade established under this Act;
- (j) "grader" means a grader appointed under this Act;
- (k) "inspector" means an inspector appointed under this Act;
- (l) "licence" means a licence issued under this Act and "licensee" has a corresponding meaning;
- (m) "marker" means a marker issued under this Act;
- (n) "Minister" means the Minister of Agriculture and Food;
- (o) "motor vehicle" means a motor vehicle as defined in the *Highway Traffic Act*;
- (p) "package" includes any box, crate or other receptacle used for or suitable for use in the marketing, transporting or shipping of a farm product;
- (q) "regulations" means the regulations made under this Act. 1974, c. 6, s. 1; 1978, c. 100, s. 8 (1).

R.S.O. 1980,  
c. 198

#### Regulations

**2.—(1)** The Lieutenant Governor in Council may make regulations,

- (a) designating as a farm product any farm product or a class thereof or any article of food or drink manufactured or derived in whole or in part from a farm product;
- (b) establishing grades for a farm product;
- (c) providing for the inspecting, grading, packing and marking of farm products;
- (d) respecting the buying, selling, advertising, handling, shipping and transporting of farm products;
- (e) respecting packages for farm products;

- (f) prescribing the manner in which sellers, transporters and shippers of farm products shall identify, for purposes of grading, individual producer's lots in a shipment;
- (g) prescribing the manner in which shippers or packers shall make returns and prepare for presentation to the producer the statements of accounts of purchase of farm products and for the investigation of such statements and the transactions represented thereby;
- (h) prescribing the fees payable upon the inspection and grading of a farm product;
- (i) prescribing the powers and duties of inspectors and graders;
- (j) providing for the issuing of inspection and grading certificates by inspectors and graders;
- (k) providing for the exemption from this Act or the regulations, or any part thereof, of any person or group of persons;
- (l) respecting the cleanliness and sanitation of premises in which a farm product is stored, processed, graded, packed, sold or offered for sale;
- (m) prescribing the structures, facilities and equipment to be provided and maintained for use in connection with the grading of farm products;
- (n) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;
- (o) prescribing the terms and conditions on which licences are issued;
- (p) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 11 or 13;
- (q) providing for the issuing of markers for motor vehicles owned or leased by persons licensed as dealers and prescribing the fees payable therefor;
- (r) prohibiting any person licensed as a dealer from transporting any farm product in a motor vehicle upon a highway in Ontario unless a marker has been issued

respecting the vehicle and requiring any markers to be displayed in such manner as may be prescribed;

(s) requiring removal of any marker issued to a person whose licence as a dealer has been suspended or revoked;

(t) prescribing the form of and conditions in the bill of lading to be used in transporting or shipping a farm product in respect of which a bill of lading is not required under the *Public Commercial Vehicles Act*;

(u) prescribing records to be kept by dealers;

(v) prescribing forms and providing for their use;

(w) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 161, s. 2 (1); 1972, c. 37, s. 2 (1); 1974, c. 6, s. 2.

Limitation  
as to time

(2) Any regulation may be limited as to time and place.

Definitions

(3) Any word or expression used in a regulation may be defined in the regulation for the purpose of the regulation. R.S.O. 1970, c. 161, s. 2 (2, 3).

Authority  
to adopt  
grades, etc.,  
by reference

R.S.C. 1970,  
c. A-8

(4) Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any grade, standard or grade name established under the *Canada Agricultural Products Standards Act*, as amended or re-enacted from time to time, and may require compliance with any such grade, standard or grade name so adopted, including any such changes. 1972, c. 37, s. 2 (2).

Inspection  
points

**3.**—(1) The Minister may designate places where farm products may be inspected and such highway inspection points as are considered necessary.

Idem

(2) The Minister may, by order, require persons in charge of farm products that are being transported from an area designated by him to proceed to a designated highway inspection point and to remain there until the farm products are inspected. R.S.O. 1970, c. 161, s. 3.

Experi-  
mental use  
of packages

**4.** The Minister may authorize the experimental use of any package, but such package shall be identified and used only in the manner authorized by the Minister. R.S.O. 1970, c. 161, s. 4.

5. The Minister may appoint a Director to administer and enforce this Act and inspectors and graders whose duties are to carry out the provisions of this Act. 1978, c. 100, s. 8 (2).

Minister  
may appoint  
Director,  
etc.

6.—(1) For the purpose of enforcing this Act and the regulations, an inspector may,

Powers of  
inspector

- (a) enter any premises, other than a dwelling, that he has reason to believe is used for the producing, marketing or processing of any farm product and inspect the premises and any farm product, packages or equipment found therein;
- (b) enter any vessel, boat, car, truck or other conveyance in which he has reason to believe there is any farm product and inspect the vessel, boat, car, truck or other conveyance and any farm product, packages or equipment found therein;
- (c) obtain a sample of any farm product or package thereof at the expense of the owner for the purpose of making an inspection thereof; and
- (d) demand the production or furnishing by the owner or custodian thereof of any books, records, documents or extracts therefrom relating to farm products.

(2) Where an inspector demands the production or furnishing of books, records, documents or extracts therefrom, the person having custody thereof shall produce or furnish them to the inspector and the inspector may detain them for the purpose of photocopying them, provided such photocopying is carried out with reasonable dispatch and the inspector shall forthwith thereafter return them to the person who produced or furnished them.

Production  
of documents

(3) Where a book, record, document or extract has been photocopied under subsection (2), a photocopy purporting to be certified by an inspector to be a copy made pursuant to subsection (2) is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Certification  
of photocopy

(4) Where an inspector makes a demand under clause (1) (d), the demand shall be in writing and shall include a statement of the nature of the investigation and the general nature of the books, records, documents or extracts required. 1972, c. 37, s. 3, *part*.

Demand  
to be in  
writing

Detention for  
purposes of  
inspection

7.—(1) For the purpose of inspecting any farm product or package, an inspector may detain it at the risk and expense of the owner and, after detaining it, the inspector shall forthwith notify the owner or person who had possession of it of the detention.

Inspection  
after  
detention

(2) Where an inspector detains any farm product or package under subsection (1), he shall, as soon as may be practicable, inspect the farm product or package and shall forthwith thereafter,

(a) release the farm product or package from detention;  
or

(b) detain the farm product or package under subsection (3).

Notice of  
detention

(3) Any farm product or package in respect of which an inspector believes on reasonable grounds an offence against this Act or the regulations has been committed, may be detained by him at the risk and expense of the owner, and the inspector shall forthwith thereafter notify the owner or the person who had possession thereof of the detention in writing.

Notice to  
contain  
particulars

(4) A notice given by an inspector under subsection (3) shall contain the particulars in respect of which it is alleged the farm product or package does not comply with the Act or the regulations.

Release  
from  
detention

(5) Where an inspector is satisfied that the owner of the farm product or package that is under detention complies with the Act and the regulations respecting the farm product or package, the inspector shall forthwith release them from detention.

Forfeiture

(6) Where a person is convicted of an offence against this Act or the regulations in respect of any farm product or package detained under subsection (3), the convicting court may declare such farm product or package to be forfeited to Her Majesty, whereupon it may be destroyed or otherwise disposed of as the Minister directs.

Prohibition  
against sale,  
etc.

(7) No person shall, without approval in writing by an inspector, sell, offer for sale, move, ship or transport a farm product or package that is under detention.

Place where  
detained  
product to  
be kept

(8) Where any farm product is detained under subsection (1) or (3), the farm product shall be detained in the place where it was found by the inspector and shall, while under detention,

- (a) be kept in such place; or
- (b) be kept in such other place as it may be moved to with the approval in writing of an inspector pursuant to subsection (7). 1972, c. 37, s. 3, *part*.

**8.** No person shall hinder or obstruct an inspector or grader in the course of his duties or furnish an inspector or grader with false information or refuse to permit any farm product to be inspected or refuse to furnish an inspector or grader with information. 1972, c. 37, s. 3, *part*.

**9.** The production by an inspector or a grader of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of the fact stated in the certificate and as conclusive proof of the authority of the inspector or grader to inspect or grade any farm product. R.S.O. 1970, c. 161, s. 9.

**10.—(1)** No person shall commence or continue to carry on business as a dealer unless he is the holder of a licence as a dealer issued by the Director.

(2) The Director shall issue a licence as a dealer to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

- (a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (d) where the applicant was previously the holder of a licence and,
  - (i) such licence was revoked, or
  - (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection

with the business, was convicted of an offence,

under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

(e) the applicant is not financially responsible.

Renewal of  
licence

(3) Subject to section 11, the Director shall renew a licence as a dealer on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1974, c. 6, s. 3, *part*.

Refusal to  
renew or  
suspension or  
revocation of  
licence

**11.** The Director may refuse to renew or may suspend or revoke a licence as a dealer if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;
- (c) the licensee has failed to comply with an award of the Arbitration Board;
- (d) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (e) any ground for refusing to issue a licence under subsection 10 (2) exists. 1974, c. 6, s. 3, *part*.

Licence for  
controlled-  
atmosphere  
storage plant

**12.—(1)** No person shall commence or continue to engage in the operation of a controlled-atmosphere storage plant unless he is the holder of a licence as an operator of a controlled-atmosphere storage plant issued by the Director.

Licence for  
packing or  
repacking  
controlled-  
atmosphere  
fruit

(2) No person shall commence or continue to engage in the packing or repacking of controlled-atmosphere fruit for sale by him unless he is the holder of a licence as a packer of controlled-atmosphere fruit issued by the Director.

(3) The holder of a licence as an operator of a controlled-atmosphere storage plant shall be deemed to be the holder of a licence as a packer of controlled-atmosphere fruit. <sup>Idem</sup>

(4) The Director shall issue a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that, <sup>Issue of licence</sup>

- (a) the applicant, or where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (e) where the applicant was previously the holder of a licence and,
  - (i) such licence was revoked, or
  - (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,

under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

- (f) the applicant is not financially responsible.

(5) Subject to section 13, the Director shall renew a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit on application <sup>Renewal of licence</sup>

therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1974, c. 6, s. 3, *part*.

Refusal to  
renew or  
suspension or  
revocation of  
licence

**13.** The Director may refuse to renew or may suspend or revoke a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee, or where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the business to contravene any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;
- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (d) any ground for refusing to issue a licence under subsection 12 (2) exists. 1974, c. 6, s. 3, *part*.

Continuation  
of licence  
pending  
renewal

**14.** Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1974, c. 6, s. 3, *part*.

Notice of  
hearing

**15.—(1)** The notice of a hearing by the Director under section 10, 11, 12 or 13 shall afford the applicant or licensee a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination  
of written or  
documentary  
evidence

**(2)** An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report

the contents of which will be given in evidence at the hearing.  
1974, c. 6, s. 3, *part*.

**16.** Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1974, c. 6, s. 3, *part*.

Variation of  
decision by  
Director

**17.**—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within thirty days after receipt of the decision of the Director, appeal to the Board.

Appeal to  
Board

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Extension  
of time  
for appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

Disposal  
of appeal

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1974, c. 6, s. 3, *part*.

Idem

**18.**—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceeding before the Board under this Act.

Parties

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter

Members  
making  
decision  
not to  
have taken  
part in  
investiga-  
tion, etc.

of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484

Only members at hearing to participate in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1974, c. 6, s. 3, *part*.

Appeal to court

**19.**—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister entitled to be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Record to be filed in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

Effect of decision of Board pending disposal of appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board,

unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1974, c. 6, s. 3, *part.*

**20.**—(1) The board known as the “Produce Arbitration Board” is continued and shall consist of three persons appointed by the Lieutenant Governor in Council. Produce Arbitration Board continued

(2) One of the members of the Arbitration Board shall be the holder of a licence as a dealer, one of the members shall be a producer of farm products and none of the members shall be members of the public service. Members

(3) The Lieutenant Governor in Council may appoint one of the members of the Arbitration Board as chairman. Chairman

(4) The members of the Arbitration Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine. 1974, c. 6, s. 3, *part.* Remuneration and expenses

**21.**—(1) Every contract between two contracting parties shall be deemed to provide that, where the parties have failed to resolve any dispute arising out of any term or condition of the contract whether express or implied, the matter in dispute shall be submitted for arbitration by the Arbitration Board and the *Arbitrations Act* applies, except where it is inconsistent with this Act. Matter in dispute to be submitted to Arbitration Board R.S.O. 1980, c. 25

(2) Either contracting party may refer the matter in dispute to the Arbitration Board by serving notice thereof upon the other contracting party and the Director. Notice of matter in dispute

(3) A notice under subsection (2) shall contain a statement of the matter in dispute and the name and address of the contracting party serving the notice. Idem

(4) Where the Director receives a notice under subsection (2), he shall forthwith notify the members of the Arbitration Board accordingly. Director to notify members

(5) All costs of the reference and award are in the discretion of the Arbitration Board which may direct to and by whom and in what manner those costs or any part thereof shall be paid or may direct that no costs shall be paid as between the contracting parties. Costs of reference and award

(6) Notwithstanding the *Arbitrations Act*, no fees are payable by the parties to the members of the Arbitration Board for their services but the Arbitration Board may include in any award a direction to pay to the Treasurer of Ontario for the services of the Arbitration Board an amount which shall not exceed the total remuneration and Board may direct payment to Treasurer of Ontario

expenses payable to the members of the Arbitration Board under subsection 20 (4) respecting the reference and award. 1974, c. 6, s. 3, *part*.

Appeal from  
award  
R.S.O. 1980,  
c. 25

**22.** An appeal lies from an award of the Arbitration Board and section 16 of the *Arbitrations Act* applies as if it were agreed by the terms of a submission that there may be an appeal from the award. 1974, c. 6, s. 3, *part*.

Offences

**23.**—(1) Except as provided in subsection (2), every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 for a first offence and to a fine of not less than \$50 and not more than \$500 for a subsequent offence.

Idem

(2) Every person who contravenes any of the provisions of section 8 is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than \$1,000. 1972, c. 37, s. 4.

Legal  
remedy not  
affected

**24.** No proceedings or conviction under this Act affects the right of any person to any legal remedy to which he would otherwise be entitled. R.S.O. 1970, c. 161, s. 11.

Where  
matter  
complained  
of deemed  
to have  
arisen

**25.** For the purpose of jurisdiction, in an information or conviction for a contravention of any of the provisions of this Act or the regulations, the matter complained of may be alleged and shall be deemed to have arisen at the place where the farm product was packed, sold, offered, exposed or had in possession for sale or transportation, as the case may be, or at the residence or usual place of residence of the person charged with the contravention. R.S.O. 1970, c. 161, s. 12.

## CHAPTER 158

## Farm Products Marketing Act

## 1. In this Act,

Interpre-  
tation

- (a) "Board" means The Farm Products Marketing Board;
- (b) "farm product" means animals, meats, eggs, poultry, wool, dairy products, grains, seeds, fruit, fruit products, vegetables, vegetable products, maple products, honey, tobacco, wood, or any class or part of any such product, and such articles of food or drink manufactured or derived in whole or in part from any such product, and such other natural products of agriculture as are designated in the regulations, and, for the purposes of this Act, fish shall be deemed to be a farm product;
- (c) "licence" means a licence provided for under the regulations;
- (d) "local board" means a board constituted under a plan;
- (e) "marketing" includes advertising, assembling, buying, financing, offering for sale, packing, processing, selling, shipping, storing and transporting and "market" and "marketed" have corresponding meanings;
- (f) "Minister" means the Minister of Agriculture and Food;
- (g) "plan" means a plan to provide for the control and regulation of the marketing of a farm product that is in force under this Act, and includes a scheme approved under any predecessor of this Act;
- (h) "regulated product" means a farm product in respect of which a plan is in force;
- (i) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 162, s. 1; 1977, c. 63, s. 1.

Purpose  
of Act

**2.** The purpose and intent of this Act is,

- (a) to provide for the control and regulation in any or all respects of the marketing within Ontario of farm products; and
- (b) where a plan established under this Act for control and regulation of the marketing of a regulated product is amended to provide for control and regulation in any or all respects of the producing of the regulated product, to provide for control and regulation in any or all respects of the producing and marketing within Ontario of the regulated product,

including the prohibition of such marketing or such producing and marketing, as the case may be, in whole or in part. R.S.O. 1970, c. 162, s. 2.

Board  
continued

**3.**—(1) The body corporate known as The Farm Products Marketing Board is continued.

Constitution  
of Board

(2) The Board shall consist of one or more persons who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council.

Chairman,  
vice-  
chairman

(3) The Lieutenant Governor in Council may appoint one of the members of the Board to act as chairman and one of the members of the Board to act as vice-chairman.

Allowances  
to members

(4) The members of the Board shall receive such allowances and expenses as the Lieutenant Governor in Council determines.

Quorum

(5) At any meeting of the Board, a quorum shall consist of at least three members of the Board, one of whom shall be either the chairman or the vice-chairman.

Officers,  
clerks, etc.,  
appointment

(6) The Board, subject to the approval of the Lieutenant Governor in Council, may appoint such officers, clerks and employees as it considers necessary, and the remuneration of such officers, clerks and employees shall be determined by the Lieutenant Governor in Council. R.S.O. 1970, c. 162, s. 3.

Authority  
of Board

**4.**—(1) The Board may,

- (a) subject to the regulations, investigate, adjust or otherwise settle any dispute relating to the marketing of a regulated product between producers and persons engaged in marketing or processing the regulated product;

- (b) investigate any matter relating to the producing, marketing or processing of a regulated product;
- (c) after a hearing, prohibit a person engaged in marketing a regulated product from terminating or varying, without just cause, the buying or the selling, as the case may be, of the regulated product;
- (d) investigate the cost of producing, processing and marketing any farm product, prices, price spreads, trade practices, methods of financing, management policies and other matters relating to the marketing of farm products;
- (e) require persons engaged in producing or marketing a regulated product to register their names, addresses and occupations with the Board or local board;
- (f) require persons engaged in producing or marketing a regulated product to furnish such information relating to the production or marketing of the regulated product, including the completing and filing of returns, as the Board or local board determines;
- (g) appoint persons to,
  - (i) inspect the books, records, documents, lands and premises and any regulated product of persons engaged in producing or marketing the regulated product, and
  - (ii) enter on lands or premises used for the producing of any regulated product and measure the area of land used to produce the regulated product or perform a count of the regulated product;
- (h) appoint persons to inspect,
  - (i) the books, records and documents,
  - (ii) the lands and premises,
  - (iii) any flue-cured tobacco, and
  - (iv) any growing plants or other development in the producing of flue-cured tobacco,

of persons engaged in the producing of flue-cured tobacco;

- (i) stimulate, increase and improve the marketing of farm products by such means as it considers proper;
- (j) co-operate with a marketing board, local board, marketing commission or marketing agency of Canada or of any province in Canada for the purpose of marketing any regulated product;
- (k) do such acts and make such orders and issue such directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations or any plan. R.S.O. 1970, c. 162, s. 4 (1); 1977, c. 63, s. 2.

Powers of investigation

R.S.O. 1980, c. 411

- (2) For the purposes of an investigation under this section, the Board has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 162, s. 4 (2); 1971, c. 49, s. 18.

Delegation of powers

- (3) The Board may delegate to a local board such of its powers under subsection (1) as it considers necessary, and may, at any time, terminate such delegation.

Regulations respecting the filing of records with the Board

- (4) The Board may make regulations,
- (a) providing for the filing by each local board with the Board of true copies of,
    - (i) minutes of all meetings of the local board,
    - (ii) all by-laws of the local board,
    - (iii) all orders and directions of the local board,
    - (iv) all reports of annual operations of the local board,
    - (v) all annual financial statements and audited reports of the local board, and
    - (vi) such further statements and reports as the Board requires from the local board;
  - (b) providing for,
    - (i) the furnishing to persons engaged in the producing, marketing or processing of a regulated product of copies of the annual statement of operations and the financial report of each local board, and

(ii) the publication of the annual statement of operations and the financial report of each local board; and

(c) providing for the manner in which and fixing the times at which, or within which, copies of minutes, orders, directions, reports and statements shall be filed with the Board, furnished to producers or published, as the case may be, under clause (a) or (b).

(5) Every local board is a body corporate.

Local board  
a body  
corporate

(6) No member of the Board or of a local board and no officer, clerk or employee of the Board or of a local board is personally liable for anything done or omitted to be done by it or by him in good faith in the exercise of any power or the performance of any duty under the authority, or purporting to be under the authority, of this Act or the regulations. R.S.O. 1970, c. 162, s. 4 (3-6).

Protection  
of board  
members and  
employees

**5.**—(1) Where the Board receives from a group of producers in Ontario or any part thereof a petition or request asking that a plan be established for the control and regulation of the marketing of a farm product or any class or part thereof and the Board is of the opinion that the group of producers is representative of the persons engaged in the production of the farm product or class or part thereof, the Board may recommend the establishment of such plan to the Minister.

Petition  
for a plan

(2) Where the Board receives from a local board a request that amendment be made to the plan or to regulations under the plan under which the local board is constituted, the Board may recommend such amendment to the Minister. R.S.O. 1970, c. 162, s. 5.

Amendment  
to plan

**6.**—(1) Notwithstanding section 5, the Lieutenant Governor in Council may make regulations,

Regulations  
re plans and  
local boards

(a) establishing, amending and revoking plans for control and regulation of the marketing within Ontario or any part thereof of any farm product and constituting local boards to administer such plans;

(b) amending any plan that is established for the control and regulation of the marketing of a regulated product to provide for the control and regulation in any or all respects of the producing within On-

tario or any part thereof of the regulated product under the plan;

- (c) designating as The Ontario Apple Marketing Commission any local board constituted under a plan to provide for the control and regulation of the marketing of apples;
- (d) defining any word or words for the purpose of any plan;
- (e) giving to any local board any or all of the powers that are vested in a co-operative corporation that is under the *Co-operative Corporations Act*, as amended from time to time, and providing that in the exercise of such powers the members of the local board shall be deemed to be the shareholders and the directors thereof;
- (f) prescribing by-laws for regulating the conduct of the affairs of the Board;
- (g) prescribing by-laws for regulating the government of local boards and the conduct of their affairs, but any local board may make by-laws not inconsistent with this Act, the regulations made under this clause or the regulations made under the plan under which the local board is established as amended from time to time;
- (h) notwithstanding any other Act, providing for,
  - (i) the carrying out by the Board or a trustee of any or all of the powers of a local board,
  - (ii) the vesting of the assets of a local board in the Board or a trustee, and
  - (iii) the disposing of any or all of the assets of a local board in such manner as is prescribed,
 and, where any regulation made under this clause is in conflict with any by-law of the local board, the regulation prevails;
- (i) dissolving a local board on such terms and conditions as he considers proper and providing for the disposition of its assets. R.S.O. 1970, c. 162, s. 6 (1); 1973, c. 104, s. 1 (2).

R.S.O. 1980,  
c. 91

Application  
of plan and  
regulations

- (2) A plan or any regulations may apply to all of Ontario or to any area within Ontario and may apply to one or

more farm products or any part, class, variety, grade or size of farm product, including any part or class of farm product produced or marketed for a particular purpose, and to any or all persons engaged in producing or marketing one or more farm products or any part, class, variety, grade or size of farm product, including any part or class of farm product produced or marketed for a particular purpose.

(3) The method by which the members of a local board shall be appointed, elected or chosen and the application of the plan shall be set out in the plan under which the local board is established. Contents of plan

(4) The acts of a member or an officer of a local board are valid notwithstanding any defects that may afterwards be discovered in his qualifications and appointment or election. Acts of members valid  
R.S.O. 1970, c. 162, s. 6 (2-4).

7.—(1) Every person when requested to do so by a person, appointed by the Board or a local board to carry out the duties referred to in clause 4 (1) (g) or (h) respecting a regulated product, shall, in respect of that regulated product, produce such books, records and documents and permit inspection thereof and supply extracts therefrom, permit inspection of such lands or premises and regulated product and permit such measurement of the area of land used to produce the regulated product or the performance of such count of the regulated product. Production of records, etc.

(2) No person shall hinder or obstruct a person, appointed by the Board or a local board to carry out the duties referred to in clause 4 (1) (g) or (h), in the course of his duties or refuse to permit him to carry out his duties or refuse to furnish him with information or furnish him with false information. Obstruction

(3) The production by any person of a certificate of his appointment by the Board or a local board under clause 4 (1) (g) or (h), purporting to be signed by the chairman and secretary of the Board or the local board, shall be accepted by any person engaged in the producing or marketing of the regulated product as *prima facie* proof of such appointment. 1977, c. 63, s. 3. Certificate of appointment

8.—(1) The Board may make regulations generally or with respect to any regulated product, Regulations

1. providing for the licensing of any or all persons before commencing or continuing to engage in the

- producing, marketing or processing of a regulated product;
2. prohibiting persons from engaging in the producing, marketing or processing of any regulated product except under the authority of a licence;
  3. providing for the refusal to grant a licence where the applicant is not qualified by experience, financial responsibility and equipment to engage in properly the business for which the application was made, or for any other reason that the Board considers proper;
  4. providing for the suspension or revocation of, or the refusal to renew, a licence for failure to observe, perform or carry out the provisions of this Act, the regulations, any plan or any order or direction of the Board or local board or marketing agency;
  5. providing for the fixing of licence fees payable yearly, half-yearly, quarterly or monthly at different amounts or in instalments from any or all persons producing or marketing the regulated product and the collecting of the licence fees and the recovering of such licence fees by suit in a court of competent jurisdiction;
  6. requiring any person who receives a regulated product to deduct from the moneys payable for the regulated product any licence fees payable to the local board by the person from whom he receives the regulated product, and to forward such licence fees to the local board;
  7. requiring any person who produces and processes a regulated product to furnish to the Board or the local board statements of the amounts of the regulated product that he produced in any year and used for processing;
  8. prescribing the form of licences;
  9. providing for the exemption from any or all of the regulations, orders or directions under any plan of any class, variety, grade or size of regulated product, or any person or class of persons engaged in the producing or marketing of the regulated product or any class, variety, grade or size of regulated product;

10. requiring the furnishing of security or proof of financial responsibility by any person engaged in the marketing of a regulated product and providing for the administration and disposition of any moneys or securities so furnished;
11. providing for the control and regulation of the producing of flue-cured tobacco, including the times and places at which flue-cured tobacco may be produced;
12. authorizing a local board,
  - i. to require that a regulated product be marketed on a quota basis,
  - ii. to prohibit any person to whom a quota has not been fixed and allotted for the marketing of a regulated product or whose quota has been cancelled from marketing any of the regulated product,
  - iii. to prohibit any person to whom a quota has been fixed and allotted for the marketing of a regulated product from marketing any of the regulated product in excess of such quota, and
  - iv. to prohibit any person to whom a quota has been fixed and allotted for the marketing of a regulated product produced on lands or premises in respect of which such quota was fixed and allotted from marketing any of the regulated product other than the regulated product produced on such lands or premises;
13. authorizing a local board,
  - i. to fix and allot to persons quotas for the marketing of a regulated product on such basis as the local board considers proper,
  - ii. to refuse to fix and allot to any person a quota for the marketing of a regulated product for any reason that the local board considers proper,
  - iii. to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for the marketing of a regulated product for any reason that the local board considers proper, and

- iv. to permit any person to whom a quota has been fixed and allotted for the marketing of a regulated product to market any of the regulated product in excess of such quota on such terms and conditions as the local board considers proper ;

14. authorizing a local board,

- i. to require that a regulated product be produced on a quota basis,
- ii. to prohibit any person to whom a quota has not been fixed and allotted for the producing of a regulated product or whose quota has been cancelled from producing any of the regulated product,
- iii. to prohibit any person to whom a quota has been fixed and allotted for the producing of a regulated product from producing any of the regulated product in excess of such quota, and
- iv. to prohibit any person to whom a quota has been fixed and allotted for the producing of a regulated product on lands or premises in respect of which such quota was fixed and allotted from producing any of the regulated product other than the regulated product produced on such lands or premises ;

15. authorizing a local board,

- i. to fix and allot to persons quotas for the producing of a regulated product on such basis as the local board considers proper,
- ii. to refuse to fix and allot to any person a quota for the producing of a regulated product for any reason that the local board considers proper,
- iii. to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for producing a regulated product for any reason that the local board considers proper, and, without limiting the generality of the foregoing, to cancel or reduce any such quota as a penalty where the local board believes

on reasonable grounds that the person to whom the quota was fixed and allotted has contravened any provision of this Act or the regulations, and

- iv. to permit any person to whom a quota has been fixed and allotted for the producing of a regulated product to produce any of the regulated product in excess of such quota on such terms and conditions as the local board considers proper;
- 16. providing for the control and regulation of the marketing of any regulated product, including the times and places at which the regulated product may be marketed;
- 17. providing for the control and regulation of agreements entered into by producers of a regulated product with persons engaged in marketing or processing the regulated product, and the prohibition of any provision or clause in such agreements;
- 18. authorizing a local board to use any class of licence fees, service charges, and other moneys payable to it, for the purposes of paying the expenses of the local board, carrying out and enforcing this Act and the regulations and carrying out the purposes of the plan under which the local board is established;
- 19. notwithstanding any other Act, providing that no local board shall make grants or other like payments of money to any person or association or body of persons without the approval of the Board;
- 20. authorizing a local board to establish a fund in connection with any plan for the payment of any moneys that may be required for the purposes mentioned in paragraph 18;
- 21. providing for the establishment, in connection with any plan, of advisory committees that may be empowered to advise and make recommendations to the local board or to any person or organization represented on the committee in respect of,
  - i. the promotion of harmonious relationships between persons engaged in the production and marketing of the regulated product,

- ii. the promotion of greater efficiency in the production and marketing of the regulated product,
  - iii. the prevention and correction of irregularities and inequities in the marketing of the regulated product,
  - iv. the improvement of the quality and variety of the regulated product,
  - v. the improvement of the circulation of market information respecting the regulated product,
  - vi. without limiting the generality of any of the foregoing, any matter with respect to which the Board or the local board may be empowered to make regulations under this Act;
22. determining the constitution of such advisory committees and regulating the practice and procedure of such committees;
23. providing for the establishment in connection with any plan, negotiating agencies that may be empowered to adopt or settle by agreement any or all of the following matters:
- i. minimum prices for the regulated product or for any class, variety, grade or size of the regulated product,
  - ii. terms, conditions and forms of agreements relating to the producing or marketing of the regulated product,
  - iii. any charges, costs or expenses relating to the production or marketing of the regulated product,
  - iv. the minimum amount of rental to be paid by or on behalf of a person engaged in processing a regulated product to lease land from an owner or tenant for the production of the regulated product and the terms and conditions of lease that shall apply in respect of the leasing of any such land;

24. providing for the establishment, in connection with any plan, of a conciliation board that may be empowered,
  - i. to endeavour to effect agreement on any matter referred to in paragraph 23 that a negotiating agency has failed to adopt or settle by agreement, and
  - ii. to recommend adoption of any agreement effected under subparagraph i to such negotiating agency ;
25. providing for the arbitration by a board of any matter not adopted or settled by agreement under paragraph 23;
26. providing for the arbitration by an arbitrator or by a board of any dispute arising out of any agreement adopted or settled under paragraph 23 or any award made under paragraph 25;
27. determining the constitution of such negotiating agencies, conciliation boards and boards of arbitration and regulating the practice and procedure of such agencies and boards ;
28. requiring that no charges, costs or expenses relating to the production or marketing of the regulated product shall be made other than such charges, costs or expenses as are provided in the agreement or award or renegotiated agreement or award in force for the marketing of the regulated product ;
29. authorizing any local board to conduct a pool or pools for the distribution of all moneys received from the sale of the regulated product and, after deducting all necessary and proper disbursements and expenses, to distribute the remainder of the moneys received from the sale in such manner that every producer receives a share of the remainder of the moneys received from the sale in relation to the amount, class, variety, grade or size of the regulated product delivered by him, and authorizing such local board to make an initial payment on delivery of the regulated product and subsequent payments until all of the remainder of the moneys received from the sale is distributed to the producers ;

30. authorizing any local board to require the price or prices payable or owing to the producers for the regulated product to be paid to or through the local board and to recover such price or prices by suit in a court of competent jurisdiction ;
31. authorizing any local board to prohibit the marketing of any class, variety, grade or size of any regulated product ;
32. providing for the carrying out of any plan declared by the Lieutenant Governor in Council to be in force ;
33. designating as a farm product any article of food or drink manufactured or derived in whole or in part from a farm product or any natural product of agriculture ;
34. providing for the holding of a plebiscite of producers upon a question of favour of a plan or amendment of a plan or any matter respecting the marketing of a regulated product ;
35. providing for the holding of public hearings on matters respecting the operation of any plan or the holding of a plebiscite of producers ;
36. requiring any person who produces a regulated product to offer to sell and to sell the regulated product to or through the local board constituted to administer the plan under which the regulated product is regulated ;
37. prohibiting any person from processing, packing or packaging any of the regulated product that has not been sold to, by or through the local board constituted to administer the plan established for the control and regulation of the marketing of the regulated product ;
38. authorizing any local board to appoint agents, to prescribe their duties and terms and conditions of employment and to provide for their remuneration ;
39. providing for the making of agreements relating to the marketing of any regulated product by or through a local board, and prescribing the forms and the terms and conditions of such agreements ;

40. providing for the making of such orders and the issuing of such directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations, any plan or any order or direction of the Board or a local board or a marketing agency; and

41. respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 162, s. 8 (1); 1972, c. 156, s. 1 (1); 1977, c. 63, s. 4 (1, 2).

(2) Every agreement made under paragraph 23 of subsection (1) and every award made under paragraph 25 or 26 of subsection (1) and every renegotiated agreement or award made under clause (b) of this subsection, Agreements and awards

(a) shall be filed with the Board forthwith after the making thereof and the Board may, notwithstanding any defect in the establishment of the negotiating agency or the board of arbitration, as the case may be, by order declare the agreement or award or renegotiated agreement or award or part thereof to come into force on the day it is so filed or on such later day as is named in the agreement or award or renegotiated agreement or award, as the case may be, and, subject to clause (b), shall remain in force for one year or for such period as is provided in the agreement or award or renegotiated agreement or award; and

(b) may at any time upon an order of the Board be renegotiated in whole or in part in such manner as the Board may determine.

(3) The *Regulations Act* does not apply to any order of the Board made under subsection (2). Where R.S.O. 1980, c. 446 not to apply

(4) Any regulation made under this section may be limited as to time and place. Regulations may be limited

(5) The Board may delegate to a local board such of its powers under subsection (1) as it considers necessary, and may at any time terminate such delegation. Delegation of powers to local board

(6) Where the Board authorizes a local board to exercise any of the powers mentioned in subsection (1), the local board, in the exercise of such powers, may make regulations or orders or issue directions. R.S.O. 1970, c. 162, s. 8 (2-6). Authority of local board to make regulations, etc.

Acts of  
local board  
deemed  
adminis-  
trative

(7) Everything that is done by a local board under the authority of paragraph 13 or 15 of subsection (1) shall be deemed to be of an administrative and not of a legislative nature. 1977, c. 63, s. 4 (3).

Regulations  
vesting  
powers in  
local board

**9.**—(1) The Board may make regulations vesting in any local board any powers that the Board considers necessary or advisable to enable such local board effectively to promote, regulate and control the marketing of the regulated product, and without limiting the generality of the foregoing, may make regulations,

(a) vesting in any local board any or all of the following powers:

- (i) to direct and control, by order or direction, either as principal or agent, the marketing of the regulated product, including the times and places at which the regulated product may be marketed,
- (ii) to determine the quality of each class, variety, grade and size of the regulated product that shall be marketed by each producer,
- (iii) to prohibit the marketing of any class, variety, grade or size of the regulated product,
- (iv) to determine from time to time the price or prices that shall be paid to producers or to the local board, as the case may be, for the regulated product or any class, variety, grade or size of the regulated product and to determine different prices for different parts of Ontario,
- (v) to fix and impose service charges from time to time for the marketing of the regulated product,
- (vi) to require the price or prices payable or owing to the producer for the regulated product to be paid to or through the local board,
- (vii) to collect from any person by suit in a court of competent jurisdiction the price or prices or any part thereof of the regulated product,
- (viii) to purchase or otherwise acquire such quantity or quantities of the regulated product

as the local board considers advisable and to sell or otherwise dispose of any of the regulated product so purchased or acquired,

- (ix) to pay from service charges imposed under subclause (v) its expenses in carrying out the purposes of the plan,
  - (x) to pay to the producers the price or prices for the regulated product less service charges imposed under subclause (v) and to fix the times at which or within which such payments shall be made;
- (b) where a local board has been designated as The Ontario Apple Marketing Commission, vesting in the Commission any or all of the following powers,
- (i) to determine from time to time the price or prices that shall be paid for the regulated product or any class, variety, grade or size of the regulated product to persons engaged in the producing, marketing or processing of the regulated product and to determine different prices for different parts of Ontario,
  - (ii) to require the price or prices payable or owing to any person for the regulated product to be paid to or through the Commission,
  - (iii) to collect from any person by suit in a court of competent jurisdiction the price or prices or any part thereof of the regulated product owing to any person engaged in the producing, marketing or processing thereof,
  - (iv) to pay to any person engaged in the producing, marketing or processing of the regulated product the price or prices for the regulated product less service charges imposed under subclause (a) (v) and to fix the times at which or within which such payments shall be made;
- (c) providing that the regulated product shall be marketed by or through the local board and prohibiting any person from marketing any of the regulated product except by or through the local board;

- (d) providing for statements to be given by any local board to persons engaged in the producing, marketing or processing of the regulated product showing the class, variety, grade or size and the number or quantity of the regulated product marketed, the price or prices paid and the particulars of the service charges imposed by it.

Powers may  
be limited

- (2) Any powers exercisable by a local board may be limited as to time and place.

Power of  
local board  
to make  
regulations,  
etc.

- (3) Where the Board vests in a local board any of the powers mentioned in clause (1) (a) or (b), the local board, in the exercise of such powers, may make regulations or orders or issue directions.

Board may  
require  
information

- (4) The Board may from time to time with respect to any regulated product require the local board to furnish any information that the Board considers necessary to determine the operations of the local board and, without limiting the generality of the foregoing, may require the local board to furnish particulars of,

- (a) the service charges fixed under subclause (1) (a) (v);
- (b) the purposes for which the service charges are used and the amounts expended for each purpose;
- (c) any proposed changes in the amounts of the service charges;
- (d) operating deficits or profits and reserves of the local board;
- (e) property leased, owned or otherwise acquired or used by the local board; and
- (f) the purposes of the plan in effect for the marketing of the regulated product.

Maximum  
service  
charges

- (5) The Board may by order in respect of any regulated product require the local board to fix the service charges under subclause (1) (a) (v) at such amounts, or at amounts not exceeding such amounts, as the Board considers proper.

Board may  
require  
information

- (6) The Board may require any local board,

- (a) to furnish to the Board particulars of any proposed change in the purposes of the plan at least ten days before the proposed change becomes effective;
- (b) to carry out any purpose of the plan that the Board considers necessary or advisable;
- (c) to vary any purpose of the plan as the Board considers advisable; and
- (d) to cease or desist from the carrying out of any purpose or proposed purpose of the plan that the Board considers unnecessary or inadvisable. R.S.O. 1970, c. 162, s. 9.

**10.** Where the Board delegates to a local board any of its powers or vests in a local board powers to promote, regulate and control the marketing of a regulated product, the Board may, at any time,

Limitation  
of powers of  
local board

- (a) limit the powers of the local board in any or all respects; and
- (b) revoke any regulation, order or direction of the local board made or purporting to be made under such powers. R.S.O. 1970, c. 162, s. 10.

**11.—(1)** Any person who is a producer and a processor of a regulated product is entitled in his respective capacities as a producer and as a processor to all the rights and privileges and is subject to all the duties and obligations of a producer and a processor.

Producer-  
processor

(2) Any person who is a producer and a processor of a regulated product shall be deemed to have received in his capacity as a processor from himself in his capacity as a producer the regulated product produced by him that he processes and to have contracted in that capacity with himself in his capacity as a producer for the sale thereof upon the condition that the regulations, orders, directions, agreements and awards and the renegotiated agreements and awards made under this Act apply.

Idem

(3) Where a producer or producers, by himself or themselves, or through a corporation of which he or they are members or shareholders, or through an agent, arrange for the processing, on his or their account, by a processor, of any regulated product produced by him or them, he or they shall be deemed to be a producer and processor or producers and processors for the purposes of subsections (1) and (2).

Producer  
deemed to  
be a  
producer-  
processor

Producer  
and person  
marketing  
regulated  
product

(4) Any person who is a producer and a person engaged in marketing a regulated product is entitled in his respective capacities as a producer and as a person engaged in marketing the regulated product to all the rights and privileges and is subject to all the duties and obligations of a producer and a person engaged in marketing the regulated product.

Idem

(5) Any person who is a producer and a person engaged in marketing a regulated product shall be deemed to have received in his capacity as a person engaged in marketing the regulated product from himself in his capacity as a producer the regulated product produced by him that he engages in marketing and to have contracted in that capacity with himself in his capacity as a producer for the sale thereof upon the condition that the regulations, orders, directions, agreements and awards and the re-negotiated agreements and awards made under this Act apply.

Producer  
deemed to  
be person  
marketing  
regulated  
product

(6) Where a producer or producers, by himself or themselves, or through a corporation of which he or they are members or shareholders, or through an agent, arrange for the marketing, on his or their account, by a person engaged in marketing, of any regulated product produced by him or them, he or they shall be deemed to be a producer and person engaged in marketing or producers and persons engaged in marketing for the purposes of subsections (4) and (5). 1977, c. 63, s. 5.

Administra-  
tion of Act

**12.** The moneys required for the administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 162, s. 13.

Petition for  
designation  
of associa-  
tion of  
producers  
R.S.O. 1980,  
cc. 8, 95

**13.—**(1) Where the Board receives from a group of producers in Ontario or any part thereof a petition or request asking that an association of producers of a farm product, other than a regulated product, incorporated under the *Agricultural Associations Act* or the *Corporations Act* or any predecessor of either of such Acts, and having as its objects the stimulating, increasing and improving of the marketing locally within Ontario of the farm product by advertising, education, research or other means, be designated as the representative association for all producers in Ontario of that farm product, the Board shall,

- (a) obtain such information as it considers necessary to determine that the association is representative of the persons engaged in the production of the farm product;
- (b) consider any proposed program of the association for the stimulating, increasing or improving of the

marketing locally within Ontario of the farm product; and

- (c) obtain estimates of the cost of carrying out such program.

(2) Where the Board is of the opinion that a majority of the producers in Ontario of the farm product mentioned in subsection (1) are in favour of the designation of the association as the representative association of all producers of that farm product in Ontario and are in favour of a proposed program of the association for stimulating, increasing and improving the marketing of the farm product, the Board may recommend to the Minister the designation of the association as the representative association of producers of the farm product within Ontario and the establishment of such program.

Recommendation by Board for designation of association and establishment of program

(3) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) designating any association of producers of a farm product, other than a regulated product, incorporated under the *Agricultural Associations Act* or the *Corporations Act* or any predecessor of either of such Acts, as the representative association of producers of the farm product within Ontario for the carrying out of a program for stimulating, increasing and improving the marketing locally within Ontario of the farm product by advertising, education, research or other means;

R.S.O. 1980, cc. 8, 95

- (b) establishing, amending and revoking any program for stimulating, increasing and improving the marketing locally within Ontario of a farm product, other than a regulated product;
- (c) requiring producers of the farm product to pay licence fees to the association;
- (d) designating the amounts of licence fees and requiring payment of the fees in different amounts or in instalments;
- (e) requiring persons who buy the farm product from a producer to deduct from moneys payable to the producer any licence fees payable by the producer and to forward such licence fees to the association;
- (f) authorizing the association to use the licence fees for the purposes of defraying the expenses of the association in the carrying out of its objects;

- (g) requiring the association to furnish to the Board such information and financial statements as the Board determines.

Where  
producers  
deemed  
licence  
holders

(4) Where the Lieutenant Governor in Council makes regulations establishing a program under subsection (3), every producer of the farm product shall be deemed to be the holder of a licence for the production of the farm product.

Limitations  
and  
exceptions

(5) Any regulation under subsection (3) may,

- (a) be limited as to time and place;
- (b) exempt from the regulations any person or class of persons or any class, variety, grade or size of the farm product; and
- (c) fix licence fees of different amounts for different classes, varieties, grades or sizes of the farm product.

Inspection of  
records and  
furnishing of  
information

(6) Where a regulation has been made under subsection (3), the Board may,

- (a) appoint any person to inspect the books, records and premises of persons who produce or buy the farm product, and section 7 applies with necessary modifications in respect of a person so appointed; and
  - (b) require persons engaged in producing or buying the farm product to furnish such information and make such returns and reports as the Board determines.
- R.S.O. 1970, c. 162, s. 14.

Injunction  
proceedings

**14.** Where it is made to appear from the material filed or evidence adduced that any offence against this Act or the regulations or any plan, order, direction, agreement, award or renegotiated agreement or award made under this Act has been or is being committed by any person engaged in marketing or processing a regulated product, the Supreme Court or a judge thereof may, upon the application of the Board or a local board, enjoin any such person from continuing to engage in marketing or processing the regulated product absolutely or for such period as seems just, and any injunction cancels the licence, if any, of the person named in the order for the same period. R.S.O. 1970, c. 162, s. 15.

Regulations  
vesting  
power in  
local board  
to make  
regulations

**15.—(1)** The Board may make regulations vesting in any local board the power to make regulations,

- (a) providing for the seizure and detention of the whole or any part of any regulated product or any class,

variety, grade or size thereof by any person appointed pursuant to clause 4 (1) (g) where the person believes on reasonable grounds an offence against the Act or the regulations has been committed in respect of the regulated product;

- (b) providing for the release from detention of the whole or any part of any regulated product or any class, variety, grade or size thereof where the local board is satisfied that the owner of the regulated product that has been seized and detained complies with the Act and the regulations respecting the regulated product;
- (c) providing for the disposal of the whole or any part of any regulated product or any class, variety, grade or size thereof that has been seized and detained and providing for the administration and disposition of any moneys derived from any such disposal; and
- (d) prescribing the manner in which the regulated product shall be seized, detained, released and disposed of.

(2) Any regulated product seized and detained under this section is seized and detained at the risk and expense of the owner.

Regulated  
product  
seized and  
detained at  
risk and  
expense of  
owner

(3) Where any regulated product is seized and detained under this section, the local board shall forthwith notify the owner or person who had possession of the regulated product of the seizure and detention, any release from detention and any disposal of the regulated product.

Notice

(4) Where the local board makes a regulation under sub-section (1), a person appointed pursuant to clause 4 (1) (g) may,

Powers of  
inspector

- (a) enter any vessel, boat, car, truck or other conveyance or any premises, other than a dwelling, used for the producing, marketing or processing of the regulated product and inspect any of the regulated product found therein;
- (b) stop any conveyance that he believes to contain any of the regulated product and inspect the conveyance and any of the regulated product found therein; and
- (c) obtain a sample of any of the regulated product at the expense of the owner for the purpose of making an inspection thereof.

Marketing  
of detained  
product  
prohibited

(5) No person shall, without approval in writing by the local board, market a regulated product that is under detention.

Approval  
by Board

(6) No regulation made by a local board under subsection (1) comes into force until it has been approved by the Board. 1971, c. 1, s. 1.

Offences

**16.** Every person who fails to comply with or contravenes any of the provisions of this Act, or of the regulations, or of any plan, or of any order, regulation or direction of the Board or any local board or of any agreement or award or renegotiated agreement or award filed with the Board is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$500 and for a subsequent offence to a fine of not more than \$5,000. R.S.O. 1970, c. 162, s. 16.

Failure  
to pay  
minimum  
price

**17.—(1)** Every person who fails to pay at least the minimum price established for a regulated product in an agreement or award filed with the Board or the price of a regulated product determined by a local board is, in addition to the fine provided for in section 16, liable to a penalty of an amount equal to the amount of such minimum or determined price, less any amount paid by such person as payment in full or in part for such regulated product.

Disposition  
of penalty

(2) Every penalty imposed under subsection (1) shall be paid to the local board and the local board shall,

- (a) distribute the money so paid *pro rata* among the persons who failed to receive at least the minimum or determined price; or
- (b) use the money to stimulate, increase and improve the marketing of the regulated product. R.S.O. 1970, c. 162, s. 17.

Moneys  
received  
by Board

**18.** All moneys received by the Board shall be deposited to the credit of the Consolidated Revenue Fund. R.S.O. 1970, c. 162, s. 18.

Evidence

**19.** In an action or prosecution under this Act where the production of an agreement, award, order, regulation, direction, rule, resolution, determination or minute of the Board or a local board is required, any document purporting to be a copy of such agreement, award, order, regulation, direction, rule, resolution, determination or minute, certified to be a true copy thereof by the chairman or secretary of the Board or the local board, as the case may be, is admissible in evidence as *prima facie* proof of the making and the text thereof without production of the original document

and without proof of the signature of the person purporting to have certified it. R.S.O. 1970, c. 162, s. 19.

**20.**—(1) In an action or prosecution under this Act, the onus is upon the defendant or the accused, as the case may be, to prove that the product in respect of which the action or prosecution is brought is not a regulated product within the meaning of this Act. Onus in action or prosecution

(2) In a prosecution under the *Agricultural Products Marketing Act* (Canada), the court if it finds that the offence is not proved under that Act but the evidence establishes an offence of a similar kind in relation to the control or regulation of the marketing of the regulated product locally within Ontario under section 16 or 17, may convict the accused under this Act notwithstanding that no information has been laid under this Act. R.S.O. 1970, c. 162, s. 20. Evidence applicable R.S.C. 1970, c. A-7

**21.**—(1) In this section,

Interpretation

- (a) “local board” means The Ontario Flue-Cured Tobacco Growers’ Marketing Board;
- (b) “producing” means planting, growing, harvesting, curing or preparing for sale, and “produced” and “production” have corresponding meanings;
- (c) “tobacco” means unmanufactured flue-cured tobacco produced in Ontario;
- (d) “tobacco farm” means one or more parcels of land in respect of which the Board or the local board determines,
  - (i) the land is suitable for the producing of tobacco, and
  - (ii) the producer has provided such buildings or other structures and equipment as are suitable and adequate for the producing of tobacco,

and in respect of which the Board or the local board, as the case may be, allots a tobacco hectareage; and

- (e) “tobacco hectareage” means a number of hectares of land fixed and allotted to a person for the producing in any year of tobacco on a tobacco farm. R.S.O. 1970, c. 162, s. 21 (1); 1978, c. 87, s. 7 (1, 2).

Regulations  
re tobacco

(2) The Board may make regulations,

(a) notwithstanding paragraph 3 of subsection 8 (1), providing for the refusal to grant a licence for the producing of tobacco for any reason that the Board considers proper;

(b) authorizing the local board,

(i) to require that tobacco be produced on a basis of tobacco hectarage or other production quota,

(ii) to prohibit any person to whom a tobacco hectarage or other production quota has not been fixed and allotted or whose tobacco hectarage or other production quota has been cancelled from producing tobacco,

(iii) to prohibit any person to whom a tobacco hectarage or other production quota has been fixed and allotted from producing any tobacco on hectarage in excess of the tobacco hectarage, or other production quota, fixed and allotted to such person, and

(iv) to prohibit any person from producing tobacco on land other than a tobacco farm in respect of which a tobacco hectarage or other production quota has been fixed and allotted to such person;

(c) authorizing the local board,

(i) to fix and allot to persons tobacco hectarages or other production quotas on such basis as the local board considers proper,

(ii) to refuse to allot to any person a tobacco hectarage or other production quota on such basis as the local board considers proper,

(iii) to cancel or reduce, or refuse to increase, a tobacco hectarage or other production quota fixed and allotted to any person for any reason that the local board considers proper;

(d) providing for the seizing, removing, destroying or otherwise disposing of any growing tobacco plants or tobacco produced or marketed in contravention of this Act or the regulations, and the retention or

disposition by the local board of any proceeds of the sale thereof. R.S.O. 1970, c. 162, s. 21 (2); 1972, c. 156, s. 2 (1); 1978, c. 87, s. 7 (3, 4).

(3) Any regulation made under this section may be limited as to time and place. Regulations may be limited

(4) The Board may delegate to the local board such of the powers under subsection (2) as it considers necessary and may at any time terminate such delegation. R.S.O. 1970, c. 162, s. 21 (3, 4). Delegation of powers to local board

(5) Where the Board authorizes the local board to exercise any of the powers mentioned in subsection (2), the local board, in the exercise of such powers, may make regulations or orders or issue directions. Exercise of powers by local board

(6) Everything that is done by the local board under the authority of clause (2) (c) shall be deemed to be of an administrative and not of a legislative nature. 1972, c. 156, s. 2 (2). Actions of local board deemed to be administrative

(7) Notwithstanding section 16, every person who fails to comply with or contravenes any of the provisions of this section or of any regulation, order or direction of the Board or the local board made pursuant to this section is guilty of an offence and on conviction is liable, for a first offence, to a fine of not more than \$500 and, for a subsequent offence, to a fine of not less than \$500 and not more than \$5,000. R.S.O. 1970, c. 162, s. 21 (5). Penalty

**22.—**(1) In this section,

Interpretation

- (a) “chicks-for-placement” means female chickens twenty weeks of age or less or any class thereof;
- (b) “eggs” means eggs of a domestic hen other than hatching eggs;
- (c) “fowl” means a domestic hen more than twenty weeks of age;
- (d) “hatching eggs” means eggs of a domestic hen produced for the purpose of hatching into chicks;
- (e) “local board” means The Ontario Egg Producers’ Marketing Board;
- (f) “producing” means,

- (i) in the case of chicks-for-placement, the provision of housing, feed, water or care therefor and the preparation thereof for sale or for use as fowl, and
- (ii) in the case of eggs and hatching eggs, the provision of housing, feed, water or care for the fowl that lay such eggs or hatching eggs and the preparation of the eggs or hatching eggs for sale or for hatching, as the case may be.

Regulations  
re chicks-  
for-  
placement,  
eggs, hatching  
eggs and fowl

(2) The Board may make regulations,

- (a) notwithstanding paragraph 3 of subsection 8 (1), providing for the refusal to grant a licence for the producing of chicks-for-placement or eggs or hatching eggs for any reason that the Board considers proper;

(b) authorizing the local board,

- (i) to require that chicks-for-placement be produced on a quota basis,
- (ii) to prohibit any person to whom a quota has not been fixed and allotted for the producing of chicks-for-placement or whose quota has been cancelled from producing any chicks-for-placement,
- (iii) to prohibit any person to whom a quota has been fixed and allotted for the producing of chicks-for-placement from producing any chicks-for-placement in excess of such quota, and
- (iv) to prohibit any person from producing chicks-for-placement in premises other than premises in respect of which a quota for producing chicks-for-placement has been fixed and allotted to such person;

(c) authorizing the local board,

- (i) to fix and allot to persons quotas for producing chicks-for-placement on such basis as the local board considers proper,
- (ii) to refuse to fix and allot to any person a quota for producing chicks-for-placement for

any reason that the local board considers proper,

- (iii) to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for producing chicks-for-placement for any reason that the local board considers proper, and, without limiting the generality of the foregoing, to cancel or reduce any such quota as a penalty where the local board has reasonable grounds for belief that the person to whom the quota was fixed and allotted has contravened any provision of this Act or the regulations, and
- (iv) to permit any person to whom a quota has been fixed and allotted for the producing of chicks-for-placement to produce any chicks-for-placement in excess of such quota on such terms and conditions as the local board considers proper;

(d) authorizing the local board,

- (i) to require that eggs be produced on a quota basis,
- (ii) to prohibit any person to whom a quota has not been fixed and allotted for the producing of eggs or whose quota has been cancelled from producing any eggs,
- (iii) to prohibit any person to whom a quota has been fixed and allotted for the producing of eggs from producing any eggs in excess of such quota, and
- (iv) to prohibit any person from producing eggs in premises other than premises in respect of which a quota for producing eggs has been fixed and allotted to such person;

(e) authorizing the local board,

- (i) to fix and allot to persons quotas for producing eggs on such basis as the local board considers proper,
- (ii) to refuse to fix and allot to any person a quota for producing eggs for any reason that the local board considers proper,

- (iii) to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for producing eggs for any reason that the local board considers proper, and, without limiting the generality of the foregoing, to cancel or reduce any such quota as a penalty where the local board has reasonable grounds for belief that the person to whom the quota was fixed and allotted has contravened any provision of this Act or the regulations, and
  - (iv) to permit any person to whom a quota has been fixed and allotted for the producing of eggs to produce any eggs in excess of such quota on such terms and conditions as the local board considers proper;
- (f) authorizing the local board,
- (i) to require that hatching eggs be produced on a quota basis,
  - (ii) to prohibit any person to whom a quota has not been fixed and allotted for the producing of hatching eggs or whose quota has been cancelled from producing any hatching eggs,
  - (iii) to prohibit any person to whom a quota has been fixed and allotted for the producing of hatching eggs from producing any hatching eggs in excess of such quota, and
  - (iv) to prohibit any person from producing hatching eggs in premises other than premises in respect of which a quota for producing hatching eggs has been fixed and allotted to such person;
- (g) authorizing the local board,
- (i) to fix and allot to persons quotas for producing hatching eggs on such basis as the local board considers proper,
  - (ii) to refuse to fix and allot to any person a quota for producing hatching eggs for any reason that the local board considers proper,
  - (iii) to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for producing hatching eggs for any reason that

the local board considers proper, and, without limiting the generality of the foregoing, to cancel or reduce any such quota as a penalty where the local board has reasonable grounds for belief that the person to whom the quota was fixed and allotted has contravened any provision of this Act or the regulations, and

- (iv) to permit any person to whom a quota has been fixed and allotted for the producing of hatching eggs to produce any hatching eggs in excess of such quota on such terms and conditions as the local board considers proper;
- (h) authorizing the local board,
- (i) to require that fowl be possessed on a quota basis,
  - (ii) to prohibit any person to whom a quota has not been fixed and allotted for the possession of fowl or whose quota has been cancelled from possessing any fowl,
  - (iii) to prohibit any person to whom a quota has been fixed and allotted for possessing fowl from possessing any fowl in excess of such quota, and
  - (iv) to prohibit any person from possessing fowl in premises other than premises in respect of which a quota for possessing fowl has been fixed and allotted to such person;
- (i) authorizing the local board,
- (i) to fix and allot to persons quotas for possessing fowl on such basis as the local board considers proper,
  - (ii) to refuse to fix and allot to any person a quota for possessing fowl for any reason that the local board considers proper,
  - (iii) to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for possessing fowl for any reason that the local board considers proper, and, without limiting the generality of the foregoing, to cancel or reduce any such quota as a penalty where

the local board has reasonable grounds for belief that the person to whom the quota was fixed and allotted has contravened any provision of this Act or the regulations, and

- (iv) to permit any person to whom a quota has been fixed and allotted for possessing fowl to possess any fowl in excess of such quota on such terms and conditions as the local board considers proper.

Regulation  
may be  
limited

- (3) Any regulation made under this section may be limited as to time and place.

Delegation of  
powers to  
local board

- (4) The Board may delegate to the local board such of its powers under clause (2) (a) as it considers necessary and may at any time terminate such delegation.

Exercise of  
powers by  
local board

- (5) Where the Board authorizes the local board to exercise any of the powers mentioned in subsection (2), the local board, in the exercise of such powers, may make regulations or orders or issue directions.

Actions of  
local board  
deemed to be  
admini-  
strative

- (6) Everything that is done by the local board under the authority of clause (2) (c), (e), (g) or (i) shall be deemed to be of an administrative and not of a legislative nature.

Powers of  
search,  
inspection,  
etc.

- (7) Every person appointed under clause 4 (1) (g) or under a regulation made thereunder may, without a warrant,

- (a) stop, enter and search any vehicle;

- (b) enter and search any premises, other than a dwelling; and

- (c) open and inspect any package or container,

if he has reasonable grounds to believe that any of them contains any chicks-for-placement, eggs, hatching eggs or fowl in respect of which there is or has been a contravention of this Act or the regulations.

Exercise of  
power

- (8) A person referred to in subsection (7) may use as much force as is necessary for him to exercise the powers conferred upon him by subsection (7). 1975, c. 6, s. 1.

Agreements

**23.**—(1) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements with the Government of Canada providing for,

- (a) the performance by a marketing agency of Canada, on behalf of the Government of Ontario, of any function relating to intraprovincial trade in a regulated product in respect of which the marketing agency may exercise its powers relating to interprovincial or export trade;
- (b) the performance by the Board or any local board of Ontario, on behalf of the Government of Canada, of any function relating to interprovincial or export trade in a regulated product in respect of which the Board or local board may exercise its powers relating to intraprovincial trade; and
- (c) such other matters relating to intraprovincial and interprovincial or export trade as may be agreed upon by the Minister and the Government of Canada.

(2) The Board or a local board may perform on behalf of the Government of Canada any function relating to interprovincial or export trade in a regulated product that is specified in an agreement entered into under subsection (1). Authority to exercise powers conferred by agreement

(3) The Board or a local board may, with the approval of the Lieutenant Governor in Council, grant authority to any marketing agency of Canada that is authorized to exercise powers of regulation in relation to interprovincial or export trade in a regulated product to perform on behalf of the Board or local board any function relating to intraprovincial trade that the Board or local board may perform. Delegation of powers

(4) The Lieutenant Governor in Council may grant authority to any marketing agency of Canada that is authorized to exercise powers of regulation in relation to interprovincial or export trade in a farm product to regulate the marketing within Ontario of such farm product, and for such purposes to exercise any power that it may exercise in relation to the marketing of such farm product in interprovincial or export trade. 1971, c. 42, s. 1. Idem



## CHAPTER 159

## Farm Products Payments Act

## 1. In this Act,

Interpre-  
tation

- (a) "board" means a board established under this Act;
- (b) "dealer" means a person engaged in the business of buying farm products from producers or in selling farm products on behalf of producers;
- (c) "farm product" means such animals, meats, eggs, poultry, wool, milk, cream, cheese, grains, seeds, fruit, vegetables, maple products, honey or tobacco or such classes or parts thereof as are designated in the regulations;
- (d) "fund" means a fund established under this Act;
- (e) "Minister" means the Minister of Agriculture and Food;
- (f) "producer" means a person who produces a farm product and includes, where so designated in the regulations,
  - (i) a marketing board under the *Milk Act*, R.S.O. 1980,  
c. 266
  - (ii) a local board under the *Farm Products Marketing Act*, and R.S.O. 1980,  
c. 158
  - (iii) an operator engaged in the business of operating community sales under the *Live Stock Community Sales Act*; R.S.O. 1980,  
c. 247
- (g) "regulations" means regulations made under this Act. R.S.O. 1970, c. 163, s. 1; 1977, c. 25, s. 1.

2.—(1) The Lieutenant Governor in Council may establish a fund for any class of producers under this Act and, where a fund is established, shall constitute a board to administer the fund and designate the name by which the board shall be known. Funds and  
boards

(2) The Lieutenant Governor in Council may appoint the members of a board and fix the remuneration of members who are not employed in the public service of Ontario. Appoint-  
ments and  
remunera-  
tion

## Dissolution

(3) The Lieutenant Governor in Council may dissolve a board on such terms and conditions as he considers proper and may provide for the disposition of its assets and any fund administered by it. R.S.O. 1970, c. 163, s. 2 (1-3).

## Milk Commission and Farm Products Marketing Board may be a board

(4) The Lieutenant Governor in Council may designate under subsection (1) The Milk Commission of Ontario or The Farm Products Marketing Board as a board constituted for the purposes of this Act and, when so designated, the said Commission or Board shall be deemed for the purposes of this Act, other than subsections (5) and (6) of this section, to be a board constituted under subsection (1). 1977, c. 25, s. 2.

## Incorporation

(5) Every board shall be a corporation without share capital responsible to the Minister.

## R.S.O. 1980, c. 95 does not apply

(6) The *Corporations Act* does not apply to a board.

## Officers and servants

R.S.O. 1980, c. 418

(7) Such officers and servants may be appointed or transferred under the *Public Service Act* as are considered necessary from time to time for the proper conduct of the affairs of boards.

## Experts

(8) A board may engage persons other than those referred to in subsection (7) to provide professional, technical or other assistance to or on behalf of the board.

## Immunity of members

(9) No member of a board or member of the staff thereof is personally liable for anything done by it or by him in good faith under the authority or purporting to be under the authority of this Act. R.S.O. 1970, c. 163, s. 2 (5-9).

## Application for payment from fund

3.—(1) Where a farm product is sold by or on behalf of a producer and,

(a) the dealer has not paid the producer the price of the farm product within fifteen days of the time the payment became due; or

(b) the whole or any part of the dealer's assets has been placed in the hands of a trustee for distribution under the *Bankruptcy Act* (Canada) or the *Bulk Sales Act*,

R.S.C. 1970, c. B-4

R.S.O. 1980, c. 52

the producer may apply to the board that administers the fund for the farm product claiming payment from such fund. R.S.O. 1970, c. 163, s. 3.

## Producer not entitled to payment

(2) Notwithstanding subsection (1), a producer is not entitled to payment from a fund under clause (1) (a) where the regulations

provide that clause (1) (a) does not apply in respect of that fund. 1980, c. 82, s. 1.

4.—(1) It is the function of a board and it has power, Functions of a board

- (a) to administer its fund;
- (b) to investigate all claims made to it under this Act and to determine the extent of their validity;
- (c) to grant or refuse the payment of claims or any part thereof and determine the amounts and manner of payment;
- (d) to recover any moneys to which it is entitled under this Act by suit in a court of competent jurisdiction or otherwise.

(2) Where a producer has received a payment from a fund and receives a payment from or on behalf of the dealer in full or partial satisfaction of the same debt for which payment from the fund was made, the producer shall pay to the board the lesser of, Refund where payment received twice

- (a) the moneys that he received from or on behalf of the dealer; or
- (b) the moneys that he received from the fund.

(3) Where an amount is paid out of a fund, the board administering the fund is subrogated for the amount of the payment to the right of the person to whom such amount is paid and may maintain an action in the name of the board or in the name of such person against any other person or persons to enforce such right. R.S.O. 1970, c. 163, s. 4. Subrogation

5.—(1) All moneys to which a board is entitled shall be paid into the fund administered by it. Payments into fund

(2) The expenses of a board, other than for the remuneration of its officers and servants who are employed in the public service of Ontario, shall be paid by the board out of the fund administered by it. R.S.O. 1970, c. 163, s. 5 (1, 2). Payments out of fund

(3) If, at any time, the amount standing to the credit of a fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in Council may authorize the Treasurer of Ontario, Advances or loans to board

- (a) in the case of a fund that exists when this clause comes into force, to advance out of the Consolidated Revenue Fund to the board that administers the fund such sums as are necessary to meet the deficit; or
- (b) in the case of any fund, to make out of the Consolidated Revenue Fund to the board that administers the fund loans that do not bear interest and do not exceed in the aggregate \$250,000,

on such terms and conditions as the Lieutenant Governor in Council directs.

Grant  
to board

(4) Where the Lieutenant Governor in Council establishes a fund under subsection 2 (1), the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make out of the Consolidated Revenue Fund to the board that administers the fund one grant in an amount not exceeding \$25,000.

Payment  
out of  
fund

(5) Every board that administers a fund shall pay out of the fund all moneys required for,

- (a) the payment of claims under this Act; and
- (b) the repayment of advances or loans, as the case may be, under subsection (3). 1977, c. 25, s. 3.

Surplus

R.S.O. 1980,  
c. 161

(6) A board may pay into the Consolidated Revenue Fund any surplus moneys in its fund that are not necessary for the current requirements of the board, and section 7 of the *Financial Administration Act* applies thereto.

Audit

(7) The accounts and financial transactions of a board shall be audited annually by the Provincial Auditor, and a report of the audit shall be made to the board and to the Minister. R.S.O. 1970, c. 163, s. 5 (4, 5).

Annual  
report

**6.**—(1) Every board shall make an annual report of its affairs to the Minister.

Tabling

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Legislative Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1970, c. 163, s. 6.

Failure to  
pay fees  
or furnish  
security

## **7. Failure,**

- (a) to pay a fee prescribed in the regulations; or

- (b) to furnish security or proof of financial responsibility in accordance with the regulations,

shall be grounds for the suspension or revocation of or refusal to issue or renew a licence under the following Acts:

1. *Farm Products Grades and Sales Act*.

R.S.O. 1980,  
cc. 157, 158,  
245, 247, 266

2. *Farm Products Marketing Act*.

3. *Live Stock and Live Stock Products Act*.

4. *Live Stock Community Sales Act*.

5. *Milk Act*. 1977, c. 25, s. 4; 1980, c. 82, s. 2.

8. The Lieutenant Governor in Council may make regulations, Regulations

- (a) designating farm products for the purposes of clause 1 (c);
- (b) designating marketing boards under the *Milk Act*, local boards under the *Farm Products Marketing Act* or operators engaged in the business of operating community sales under the *Live Stock Community Sales Act*, as producers, and limiting the extent of any such designation;
- (c) exempting any class or classes of dealers from the application of this Act or the regulations, or any part thereof;
- (d) exempting any class or classes of producers from the application of this Act or the regulations, or any part thereof;
- (e) prescribing conditions for the exemption of any class or classes of dealers or producers;
- (f) prescribing by-laws for regulating the government of boards and the conduct of their affairs, but any board may make by-laws not inconsistent with this Act or with the regulations;
- (g) providing that clause 3 (1) (a) does not apply in respect of a fund;
- (h) prescribing additional conditions to those referred to in subsection 3 (1) under which a producer may apply for

payment from a fund and providing for such applications and for payments from the fund;

- (*i*) requiring dealers or producers, or both, to pay fees to a board and prescribing the amounts and the times and manner of payment thereof, and providing for the collecting thereof;
- (*j*) requiring the furnishing of security or proof of financial responsibility by dealers engaged in the marketing of a farm product in respect of which a fund is established and providing for the administration, forfeiture and disposition of any moneys or securities so furnished;
- (*k*) prescribing the manner in which and the conditions under which a dealer shall make payment to producers for a farm product in respect of which a fund is established;
- (*l*) prescribing, for the purposes of clause 3 (*a*), the times when payments become due for a farm product in respect of which a fund is established;
- (*m*) prescribing the terms and conditions under which a person who sells a farm product on behalf of a producer and who is designated as a producer may claim payment from a fund and receive payment therefrom;
- (*n*) providing procedures for the determination and payment of claims including the grounds upon which a board may pay or refuse to pay claims;
- (*o*) limiting the amount that may be paid out of a fund,
  - (*i*) to any producer or class thereof, or
  - (*ii*) respecting any dealer or class thereof;
- (*p*) prescribing forms and providing for their use;
- (*q*) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.  
R.S.O. 1970, c. 163, s. 8; 1977, c. 25, s. 5; 1980, c. 82, s. 3.

## CHAPTER 160

## Ferries Act

1. Except as otherwise provided in this Act, every grant or licence of ferry shall be by the Lieutenant Governor under the Great Seal and shall not extend for a longer term than seven years at any one time. R.S.O. 1970, c. 165, s. 1.

Issue and  
duration of  
licences

2. Except as otherwise provided in this Act, no ferry shall be leased by the Crown nor shall any lease thereof be renewed or any licence of ferry be granted by the Crown except by public competition and after notice of the time and place at which tenders will be received for the lease or licence for such ferry inserted at least once in each of four consecutive weeks in *The Ontario Gazette* and in one or more of the newspapers published in the county or district in which the ferry is situate and to persons giving such security as the Lieutenant Governor in Council may prescribe. R.S.O. 1970, c. 165, s. 2.

Requisites  
to issue

3. Except in the case of municipalities as hereinafter provided, where the limits to which the exclusive privilege of any ferry extends are not already defined, such exclusive privilege shall not be granted for a greater distance than one and one-half miles on each side of the place at which the ferry is usually kept, but nothing herein invalidates or infringes upon any existing grant or right of ferry. R.S.O. 1970, c. 165, s. 3.

Limits for  
ferries

4.—(1) Where a ferry is required over any stream or other water and the two shores are in different local municipalities not in the same county, or one shore is in a city or town separated from a county and the other is in another municipality in the same county, the Lieutenant Governor may grant a licence to either of such municipalities exclusively, or to both jointly, or to either of the counties or to both jointly, or to one of the counties jointly with a city or town, as he considers most conducive to the public interest.

Licence for  
ferry be-  
tween two  
muni-  
cipalities

(2) The licence shall confer the right to establish a ferry from shore to shore on such stream or other water, with such limits and extent as appear advisable to the Lieutenant Governor in Council and are expressed in the licence.

Extent of  
right con-  
ferred, etc.

(3) The licence shall be upon conditions as to the description of craft and motive power to be used and upon such

Conditions  
of licence as  
to motive  
power and  
other  
matters

further terms and conditions as the Lieutenant Governor in Council may direct, and the terms and conditions shall be expressed in the licence.

Municipalities  
subletting  
ferries

(4) The council of the municipality may pass by-laws, not inconsistent with the terms of the licence, for subletting the ferry to such person and upon such terms and conditions as the council thinks fit.

Concurrence  
of municipalities  
where joint  
licence

(5) Where a licence is granted to two municipalities jointly, no by-law of the council of one municipality has any force until a by-law has been passed in similar terms, as nearly as may be, by the council of the other municipality.

Application  
of certain  
provisions  
excluded

(6) The provision as to the duration of the licence in section 1 and the provisions of section 2 do not apply to this section. R.S.O. 1970, c. 165, s. 4.

Municipal  
by-laws to  
establish,  
operate and  
licence  
ferries

**5.**—(1) The council of any township, town or village may pass by-laws for establishing and for maintaining and operating, and the council of any municipality, other than a county, may pass by-laws for licensing upon such terms and conditions as are considered proper and for regulating ferries between any two places in the municipality or over any navigable waters in or upon the boundary of the municipality, and for establishing the rates of ferriage to be taken thereon, but no such by-law has effect until approved by the Lieutenant Governor in Council.

Powers of  
county  
councils

(2) The council of any county has the like power in regard to ferries between places that are both situate in the county but not in the same local municipality, provided that neither of such places is situate in a city or separated town.

Powers of  
Lieutenant  
Governor in  
Council

(3) Until the council exercises the powers conferred by this section, the Lieutenant Governor in Council may license and regulate such ferries and establish the rates of ferriage to be taken thereon. R.S.O. 1970, c. 165, s. 5.

Granting  
exclusive  
privileges

**6.** The council of any municipality may grant exclusive privileges in any ferry vested in the corporation of the municipality. R.S.O. 1970, c. 165, s. 6.

Right of  
persons to  
keep boats  
at ferry for  
their own  
use

**7.** Any person may keep at a ferry a boat, vessel or other craft for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft to cross the stream or other water on which the ferry is situate, but such privilege shall not be used for the purpose of taking, carrying or conveying any other person or property for hire, gain, reward or profit, or hope

thereof, or directly or indirectly to enable any such other person to evade the payment of tolls at the ferry. R.S.O. 1970, c. 165, s. 7.

8. If any person unlawfully interferes with any right or licence of ferry by taking, carrying or conveying at any ferry across the stream or other water on which it is situate any person, cattle, carriage or wares in any boat, vessel or other craft for hire, gain, reward, profit, or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee or licensee of the Crown of any such ferry, the offender is guilty of an offence and on conviction is liable to a fine of not more than \$20. R.S.O. 1970, c. 165, s. 8.

Penalty for  
interfering  
with licensed  
ferryman's  
rights



## CHAPTER 161

## Financial Administration Act

## 1. In this Act,

Interpre-  
tation

- (a) "appropriation" means an authority to pay money out of the Consolidated Revenue Fund;
- (b) "Consolidated Revenue Fund" means the aggregate of all public moneys that are on deposit at the credit of the Treasurer or in the name of any agency of the Crown approved by the Lieutenant Governor in Council;
- (c) "Crown" means the Crown in right of Ontario;
- (d) "Deputy Treasurer" means the Deputy Treasurer of Ontario and Deputy Minister of Economics;
- (e) "fiscal agent" means a fiscal agent appointed under section 30;
- (f) "fiscal year" means the period from the 1st day of April in one year to the 31st day of March in the next year;
- (g) "minister" means a member of the Executive Council;
- (h) "ministry" means a ministry of the Government of Ontario, and includes a board, commission, authority, corporation and any other agency of the Government of Ontario;
- (i) "money" includes negotiable instruments;
- (j) "money paid to Ontario for a special purpose" includes money that is paid to a public officer under or pursuant to a statute, trust, undertaking, agreement or contract and that is to be disbursed for a purpose specified in or pursuant to such statute, trust, undertaking, agreement or contract;

- (k) "negotiable instrument" includes a cheque, draft, traveller's cheque, bill of exchange, money order and any similar instrument;
- (l) "public money" means all money belonging to Ontario received or collected by the Treasurer or by any other public officer or by any person authorized to receive and collect such money and includes,
  - (i) special funds of Ontario and the income and revenue therefrom,
  - (ii) revenues of Ontario,
  - (iii) money raised by way of loan by Ontario or received by Ontario through the issue and sale of securities, and
  - (iv) money paid to Ontario for a special purpose;
- (m) "public officer" includes a minister and a person employed in a ministry;
- (n) "registrar" means a registrar appointed under section 30;
- (o) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 166, s. 1; 1972, c. 1, ss. 2, 105 (1, 2).

## PART I

### PUBLIC MONEY

Public  
money  
to be  
deposited

**2.—(1)** Subject to this Part, all public money shall be deposited to the credit of the Treasurer.

Establish-  
ment of bank  
accounts

(2) The Treasurer shall establish in the name of the Treasurer of Ontario or in the name of any agency of the Crown approved by the Lieutenant Governor in Council accounts with such banks as he designates for the deposit of public money.

Duty of  
person  
collecting  
public  
money

(3) Every person who collects or receives public money shall pay all money coming into his hands to the credit of the Treasurer of Ontario through such officers, banks or

persons and in such manner as the Treasurer may direct, and shall keep a record of receipts and deposits thereof in such form and manner as the Treasurer may direct. R.S.O. 1970, c. 166, s. 11.

3.—(1) The Treasurer, when he considers it advisable for the sound and efficient management of public money or of the public debt or of any sinking fund, may from time to time and on such terms and conditions as he considers advisable, purchase, acquire and hold,

Treasurer  
may  
purchase  
securities

- (a) securities issued by or guaranteed as to principal and interest by Ontario, any other province of Canada, Canada or the United Kingdom;
- (b) securities issued by the United States of America;
- (c) securities issued or guaranteed by the International Bank for Reconstruction and Development payable in Canadian or United States currency;
- (d) deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by any chartered bank to which the *Bank Act* (Canada) applies; and
- (e) such other securities as may from time to time be authorized by the Lieutenant Governor in Council,

1980-81,  
c. 40 (Can.)

and pay therefor out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 12 (1); 1973, c. 142, s. 1.

(2) The Treasurer may sell any securities purchased, acquired or held pursuant to this section and the proceeds of such sales shall be deposited to the credit of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 12 (2).

Sale of  
such  
securities

(3) Any fees, commissions or expenses incurred in respect of the purchase, acquisition, holding or sale of any securities under this section are a charge upon and payable out of the Consolidated Revenue Fund. 1979, c. 24, s. 1.

Fees, etc.,  
a charge on  
the Con.  
Rev. Fund

4.—(1) Where any security, obligation, debenture or covenant, or any interest in real or personal estate, effects, or property is given, or transferred to, made with, or vested in the Treasurer by virtue of his office, the security, obligation, debenture or covenant, and any right of action in respect thereto, and all the estate, right and interest of the Treasurer in respect thereof, upon the death, resignation or removal

Vesting of  
securities,  
etc., in  
Treasurer  
and his  
successors

from office of the Treasurer, vests, subject to the same trusts as they were respectively subject to, in the succeeding Treasurer, and may be proceeded on by action or in any other manner, or may be assigned, transferred or discharged, in the name of the succeeding Treasurer.

Realizing on securities

(2) A security, obligation, debenture, covenant or an interest in real or personal estate, effects and property may be proceeded on in the name of, or assigned, transferred or discharged by, any member of the Executive Council acting under the *Executive Council Act*.

R.S.O. 1980, c. 147

Application of section

(3) This section applies to every security, obligation, debenture or covenant, and every interest in real or personal estate, effects or property given or transferred to, made with, or vested in any former Treasurer, by virtue or on account of his office, and transfers all the interest, rights and estate of the former Treasurer to the Treasurer for the time being to be vested in him by virtue of his office. R.S.O. 1970, c. 166, s. 13.

Settlement of or determination of uncollectability of debts

5.—(1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Treasurer may, subject to any other Act affecting such obligation, debt or claim, negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim, or may determine that any such obligation, debt or claim is uncollectable.

Deletion of losses

(2) The Lieutenant Governor in Council, on the recommendation of the Treasurer, may, if he considers it in the public interest, delete from the accounts any loss incurred in any settlement or determination made under subsection (1).

Losses charged to surplus account

(3) The losses deleted from the accounts during any fiscal year shall be reported in the Public Accounts for that year. R.S.O. 1970, c. 166, s. 14.

Treasurer authorized to accept certain gifts and bequests

6.—(1) The Treasurer may accept from any person gifts or bequests for the permanent endowment of any charitable or educational object in Ontario, and may invest them in such securities as the Lieutenant Governor in Council may direct.

Interest

(2) The Treasurer shall pay interest upon such gifts or bequests to such persons, at such rate, at such times and computed in such manner as the Lieutenant Governor in Council from time to time may determine, and such interest is a charge upon and payable out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 15.

7.—(1) Money received by or on behalf of the Crown for a special purpose and paid into the Consolidated Revenue Fund may, subject to any Act applicable thereto, be paid out of the Consolidated Revenue Fund for that purpose. Money received for special purpose

(2) The Treasurer may pay interest upon any money to which subsection (1) applies, at such rate, at such times and computed in such manner as the Lieutenant Governor in Council may from time to time determine, and such interest is a charge upon and payable out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 16. Interest

8. Every person, on the termination of his charge of an account, or, in the case of his death, his representatives, shall forthwith pay over any balance of public money then due to the Crown in respect of such charge to the public officer authorized to receive it. R.S.O. 1970, c. 166, s. 17. Recovery of balance of public money

9.—(1) Where a refund is authorized to be made to a person, such refund shall be paid out of the Consolidated Revenue Fund and charged to the appropriate account. R.S.O. 1970, c. 166, s. 18. Refunds

(2) Where an Act or a regulation made thereunder provides for the payment of a fee and, Idem

(a) the Act or the regulation does not provide for a refund of the fee; and

(b) the Act does not authorize the making of a regulation providing for a refund of the fee,

the Lieutenant Governor in Council may make regulations under the Act providing for a refund of the fee in whole or in part and prescribing the conditions under which the refund may be made. 1979, c. 24, s. 2.

## PART II

### DISBURSEMENT OF PUBLIC MONEY

10.—(1) Every payment out of the Consolidated Revenue Fund shall be made by cheque which shall be signed by the Treasurer and by the Deputy Treasurer or such other officer of the Ministry of Treasury and Economics who is for the time being authorized by the Treasurer to sign cheques. R.S.O. 1970, c. 166, s. 19 (1); 1972, c. 3, s. 17 (2). Form of payments out of Fund

## Signature

(2) The Treasurer may authorize the use of facsimile signatures on cheques to be affixed thereto by the use of a rubber stamp or by printing, lithographing, engraving or by other mechanical means.

## Destruction

(3) The Treasurer, with the approval of the Provincial Auditor, may authorize the destruction from time to time of paid and cancelled cheques. R.S.O. 1970, c. 166, s. 19 (2, 3).

Payment of  
guarantee

**11.** Where a guarantee has been given under the authority of the Legislature by or on behalf of the Crown for the payment of a debt or obligation, any amount required to be paid by the terms of the guarantee may, subject to the Act authorizing the guarantee, be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 20.

How public  
moneys to  
be paid in  
certain  
circum-  
stances

**12.** If any public money is appropriated by an Act for any purpose or is directed by the judgment of a court or the award of arbitrators or other lawful authority to be paid by the Lieutenant Governor and no other provision is made respecting it, such money is payable under warrant of the Lieutenant Governor, directed to the Treasurer, out of the Consolidated Revenue Fund, and all persons entrusted with the expenditure of any such money or a part thereof shall account for it in such manner and form, with such vouchers, at such periods and to such officer as the Treasurer may direct. R.S.O. 1970, c. 166, s. 23.

Accountable  
advances

**13.—(1)** On the application of a minister, the Treasurer may authorize an accountable advance out of the Consolidated Revenue Fund for the purpose of meeting disbursements for travelling expenses or other contingencies or of making payments on account of expenses incurred or to be incurred.

## Idem

(2) If at the termination of the fiscal year in which an advance was made no accounting or repayment of the advance has been received, such advance shall be repaid or accounted for within thirty days thereafter. R.S.O. 1970, c. 166, s. 25.

Interim  
payments  
from Con.  
Rev. Fund

**14.** On the application of a minister, the Treasurer may make interim payments from the Consolidated Revenue Fund for goods or services charged to a ministry where the charges are to be recovered from another ministry or ministries or from another appropriation or from a federal appropriation. 1971, c. 55, s. 3; 1972, c. 1, s. 2.

**15.** An amount received as a refund or repayment of an expenditure or advance and deposited to the credit of the Treasurer shall be included in the unexpended balance of the appropriation against which it was charged. R.S.O. 1970, c. 166, s. 27. Expenditure  
refunds

### PART III

#### PUBLIC DEBT

**16.** In this Part, "securities" means securities of Ontario, and includes Ontario Government stock, bonds, debentures, interest bearing and non-interest bearing treasury bills, notes and any other security representing part of the public debt of Ontario. R.S.O. 1970, c. 166, s. 28. Interpre-  
tation

**17.** No money shall be raised by way of loan by the Crown except under this or any other Act of the Legislature. R.S.O. 1970, c. 166, s. 29. Loans to be  
authorized

**18.** All money raised by way of loan and the interest thereon and the principal amount of and interest on all securities issued are a charge on and are payable out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 30. Money  
raised a  
charge on  
Con. Rev.  
Fund

**19.** Where by this or any other Act authority is given to the Lieutenant Governor in Council to raise a sum of money by way of loan, unless there is a provision to the contrary in the Act by which the authority is given, such sum may, in the discretion of the Lieutenant Governor in Council, be raised in one of the following ways, or partly in one and partly in the other: Raising of  
loans, etc.

1. By the issue and sale of any class or classes of securities which may be in such form or forms, may be for such separate sums, may bear interest at such rate or rates, may be payable as to principal and interest at such time or times and at such place or places as the Lieutenant Governor in Council considers expedient.
2. By temporary loan or loans, and in any such case, unless the Lieutenant Governor in Council otherwise directs, the sums authorized to be raised by way of temporary loan, or any part thereof, may be raised by way of cheques creating overdrafts having such

signatures affixed thereto as provided by section 19 as would make such cheques, if not creating overdrafts, binding on Ontario, and all moneys paid in honouring any such cheque by any bank upon which such cheque is drawn shall conclusively be deemed to have been raised by the Lieutenant Governor in Council in pursuance of the authorizing Act. R.S.O. 1970, c. 166, s. 31; 1971, c. 55, s. 4.

Raising of  
loans for  
refunding  
purposes

**20.**—(1) In addition to all money authorized to be raised by way of loan by any other Act, the Lieutenant Governor in Council may raise money by way of loan in such manner and at such times as is considered expedient by the issue and sale of any class or classes of securities in such amounts as will realize the net sum required for any or all of the following purposes:

1. Payment, refunding or renewal from time to time of the whole or any part of any loan raised or securities issued under this or any other Act, or the reimbursement of the Consolidated Revenue Fund for expenditures made therefrom for the payment of such security within a period of one year after maturity date of such security, notwithstanding that the issue of securities for such purpose may have the effect of increasing the amount of the public debt or of extending the term of years, if any, fixed by the Act authorizing the raising of the loan or the issue of the securities being paid, refunded or renewed.
2. Payment of the whole or any part of any loan or of any liability or of any bonds, debentures or other obligations, payment whereof is guaranteed or assumed by Ontario.

Effect of  
recital in  
order

(2) A recital or declaration in the order of the Lieutenant Governor in Council authorizing the issue and sale of securities to the effect that the amount of the securities so authorized is necessary to realize the net sum required to be raised by way of loan is conclusive evidence of that fact. R.S.O. 1970, c. 166, s. 32.

Securities  
may be  
subject  
to call

**21.** Any securities issued under the authority of this or any other Act heretofore or hereafter passed may be made redeemable or payable in advance of maturity upon such terms and conditions, at such time or times, and at such price or prices as the Lieutenant Governor in Council may provide at the time of the issue thereof. R.S.O. 1970, c. 166, s. 33.

**22.**—(1) In addition to all moneys authorized to be raised by way of loan by this or any other Act, the Treasurer, subject to the approval of the Lieutenant Governor in Council, may borrow from time to time for any of the following purposes,

Temporary  
bank loans  
not  
exceeding  
\$250,000,000  
authorized

- (a) to discharge any indebtedness or obligation of Ontario;
- (b) to make any payment authorized or required by any Act to be made out of the Consolidated Revenue Fund;
- (c) to reimburse the Consolidated Revenue Fund for any moneys expended for any such purposes,

by way of temporary loan from any chartered bank to which the *Bank Act* (Canada) applies, such sums not exceeding at any one time \$250,000,000, as the Treasurer considers necessary, either by way of bank overdraft or loan or in any other manner whatsoever. 1973, c. 142, s. 2, *part*; 1979, c. 24, s. 3.

1980-81,  
c. 40 (Can.)

(2) Any cheques, promissory notes or other instruments that may be necessary or desirable for the purposes of subsection (1) may be executed by the Treasurer in such manner as the Treasurer may determine. 1973, c. 142, s. 2, *part*.

Execution of  
instruments

**23.**—(1) The Lieutenant Governor in Council may authorize the Treasurer or any officer of the Ministry of Treasury and Economics to enter into such contracts and agreements relating to the raising of loans or the issue and sale of securities as the Lieutenant Governor in Council approves. 1971, c. 55, s. 5, *part*.

Contracts  
and  
agreements  
for the  
raising of  
loans

(2) Notwithstanding any other provisions of this Act, where the Lieutenant Governor in Council authorizes the raising of a loan by the issue and sale of interest bearing treasury bills or non-interest bearing treasury bills, the Lieutenant Governor in Council may authorize the Treasurer,

Authority  
to sell  
treasury bills

- (a) to determine the date of the issue and the date of maturity thereof, the rate of interest, if any, and the dates of repayment of interest, if any;
- (b) to sell any of such treasury bills for such price or prices and upon such terms and conditions as the Treasurer in his discretion may from time to time consider necessary; and
- (c) to issue and sell any of such treasury bills from time to time as may be subsequently required

for the purposes provided in section 32, on the terms and in the manner provided herein without further authorization or approval of the Lieutenant Governor in Council.

Determina-  
tion of  
conditions of  
issue by  
Treasurer,  
etc.,  
authorized

(3) Notwithstanding any other provision of this Act, where an issue of securities is authorized, the Lieutenant Governor in Council may authorize the Treasurer, the Deputy Treasurer or other officer of the Ministry of Treasury and Economics,

- (a) to enter into an agreement on behalf of Ontario providing for the sale of such securities in a principal amount not exceeding an amount authorized by the Lieutenant Governor in Council;
- (b) to determine the rate or rates of interest, not exceeding the maximum rate or rates of interest authorized by the Lieutenant Governor in Council; and
- (c) to sell such securities for such price or prices, not less than the minimum price or prices authorized by the Lieutenant Governor in Council and upon such other terms and conditions as may be considered necessary. 1973, c. 142, s. 3.

Securities  
payable in  
currency

**24.** Securities issued under the authority of this Act may be made payable in the currency or currencies of any country or countries. R.S.O. 1970, c. 166, s. 35.

Loans in  
foreign  
currencies  
authorized

**25.—**(1) Every Act heretofore or hereafter passed that authorizes the borrowing or raising by way of loan of a specific or maximum number of dollars or the issue of securities for a specific or maximum number of dollars in principal amount shall be deemed to authorize,

- (a) the borrowing or raising by way of loan, in whole or in part, of the same number of dollars of the United States of America or the issue of securities, in whole or in part, for the same number of dollars of the United States of America in principal amount, as the case may be; and
- (b) the borrowing or raising by way of loan, in whole or in part, of an equivalent amount in the currency of any country other than Canada or the United States of America, or the issue of securities, in whole or in part, for an equivalent principal amount in the

currency of any country other than Canada or the United States of America, as the case may be, calculated in each case in accordance with the nominal rate of exchange between the Canadian dollar and the currency concerned as quoted by any chartered bank in Canada as of any time on the business day next preceding the date on which the Lieutenant Governor in Council authorizes the raising of the loan or the issue of the securities. R.S.O. 1970, c. 166, s. 36.

(2) For the purpose of any borrowing limitation under this or any other Act, the principal amount of any securities previously issued or authorized to be issued, payable in a currency of any country other than Canada, shall be deemed to be the equivalent thereof in Canadian dollars as calculated under subsection (1). 1971, c. 55, s. 6.

**26.** The Lieutenant Governor in Council may direct that securities, the money invested therein and the interest thereon shall be free from all taxes, succession duties, charges and impositions now or hereafter imposed by Ontario and by any taxing authority thereof or therein. R.S.O. 1970, c. 166, s. 37.

**27.** The Lieutenant Governor in Council may change the form of any part of the debt of Ontario by substituting one security for another, provided that neither the capital of the debt nor the annual charge for interest is thereby increased, except where a security bearing a lower rate of interest is substituted for one bearing a higher rate of interest, in which case only the amount of the capital may be increased by an amount not exceeding the difference between the then present value of the respective securities, but such substitution shall not be made unless the consent of the holder of the security for which another is substituted is obtained, or such security is previously purchased or redeemed by or on account of Ontario, and such substitution may be made by the sale of a security of one class and the purchase of that for which it is desired to substitute it. R.S.O. 1970, c. 166, s. 38.

**28.** The Lieutenant Governor in Council may provide for the manner of executing securities and the coupons, if any, attached thereto, and may provide that any signature or signatures upon the securities and the coupons attached thereto may be engraved, lithographed, printed or otherwise mechanically reproduced. R.S.O. 1970, c. 166, s. 39.

**29.** The Lieutenant Governor in Council may provide that any securities to be issued shall contain or be subject to such conditions or provisions, including conditions or provisions

with respect to the registration and transfer thereof and with respect to the exchange of securities of one form or denomination for securities of a different form or denomination of equivalent aggregate principal amount and bearing the same rate of interest, as he considers expedient. R.S.O. 1970, c. 166, s. 40.

Registrars  
and fiscal  
agents

**30.**—(1) The Lieutenant Governor in Council may,

- (a) appoint one or more registrars to perform such services in respect of the registration of securities as he prescribes;
- (b) appoint one or more fiscal agents to perform such services in respect of loans as he prescribes;
- (c) prescribe the duties of registrars and fiscal agents;
- (d) fix the remuneration or compensation of any such registrar or fiscal agent.

Accounting  
by fiscal  
agents and  
registrars

(2) Every registrar and fiscal agent shall as often as required by the Treasurer give to the Treasurer an accounting, in such form and containing such information as the Treasurer may prescribe, of all his transactions as registrar or fiscal agent. R.S.O. 1970, c. 166, s. 41.

Officers not  
bound to  
see to trust

**31.** No officer or person employed in the inscription, registration, transfer, management or redemption of any securities, or in the payment of any interest thereon, is bound to see to the execution of any trust, expressed or implied, to which such securities are subject, or is liable in any way to any person for anything so done by him. R.S.O. 1970, c. 166, s. 42.

Payment  
of lost  
securities

**32.** In the event of the loss of any securities or interest coupons thereon by a holder thereof, the Treasurer may pay the amount thereof out of the Consolidated Revenue Fund and may take a bond in such amount and in such form as he considers advisable indemnifying Ontario against loss in respect of such payment. R.S.O. 1970, c. 166, s. 43.

Sinking  
funds

**33.** The Lieutenant Governor in Council may provide for the creation and management of a special sinking fund with respect to any issue of securities or of a general sinking fund with respect to such securities as have been or are hereafter issued without provision for a sinking fund with respect to them. R.S.O. 1970, c. 166, s. 44.

Payment of  
loan expenses  
out of  
Con. Rev.  
Fund

**34.** All money required to provide a sinking fund or otherwise required to secure repayment of securities, the remunera-

tion and compensation of registrars and fiscal agents and all costs, expenses and charges incurred in the negotiation or raising of loans or in the issue, redemption, servicing, payment and management of any loan and any securities issued in respect thereof, may be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 166, s. 45.

**35.** The Treasurer may cancel securities that come into his hands through purchase for sinking fund or otherwise, and upon cancellation such securities cease to be a charge upon the Consolidated Revenue Fund R.S.O. 1970, c. 166, s. 46.

Power to  
cancel  
securities  
acquired on  
sinking fund  
account

**36.** Every security issued pursuant to this Act shall contain in the body of the security a statement to that effect. 1971, c. 55, s. 7.

Securities  
to state  
authority

**37.** Nothing in this Act impairs or prejudicially affects the rights of the holder of any securities issued before this Act comes into force. R.S.O. 1970, c. 166, s. 48.

Securities  
heretofore  
issued

**38.** The Lieutenant Governor in Council may make such regulations as he considers necessary,

Regulations

- (a) for the management of the public debt;
- (b) for the inscription of any securities;
- (c) for the registration, transfer, exchange, redemption, cancellation and destruction of securities;
- (d) prescribing a rate of interest per annum for the purpose of subsection 39 (3). R.S.O. 1970, c. 166, s. 49; 1979, c. 24, s. 4.

## PART IV

### CIVIL LIABILITY

**39.—(1)** Where the Treasurer has reason to believe that a person,

Notice to  
person  
failing to  
pay over  
public money

- (a) has received money for the Crown and has not paid it over;
- (b) has received money for which he is accountable to the Crown and has not accounted for it; or
- (c) has in his hands any public money applicable to a purpose and has not applied it to that purpose,

the Treasurer may give notice to such person, or to his personal representative in case of his death, requiring him within such time from the service of the notice as is stated therein, to pay over, account for, or so apply such money, as the case may be, and to transmit to the Treasurer proper vouchers that he has done so.

Service  
of notice

(2) The notice may be served by delivering a copy to the person to whom it is addressed or by leaving it for him at his usual place of residence. R.S.O. 1970, c. 166, s. 50 (1, 2).

Proceedings  
where notice  
not com-  
plied with

(3) Where a person fails to comply with the notice given under subsection (1) within the time stated therein, the Treasurer may state an account between the Crown and such person showing the amount of the money not paid over, accounted for or applied, as the case may be, and, in the discretion of the Treasurer, charging interest on the whole or any part thereof at a rate of interest per annum prescribed by the Lieutenant Governor in Council from such date as the Treasurer may determine, and in any proceedings for the recovery of such money a copy of the account so stated by the Treasurer, certified by him, is admissible in evidence as *prima facie* proof that the amount stated therein, together with interest, is due and payable to the Crown, without proof of the signature of the Treasurer or his official character, and without further proof thereof, and such amount and interest may be recovered as a debt due to the Crown in any court of competent jurisdiction. R.S.O. 1970, c. 166, s. 50 (3); 1979, c. 24, s. 5.

Unapplied  
public money  
for purpose to  
be applied  
out of Con.  
Rev. Fund

**40.** Where a person has received public money to be applied to a purpose and has not so applied it and a notice has been given under subsection 39 (1), an equal sum out of the Consolidated Revenue Fund may in the meantime be applied to the purpose to which such sum ought to have been applied. R.S.O. 1970, c. 166, s. 51.

Evidence

**41.** Where it appears,

- (a) by the books or accounts kept by or in the office of any person employed in the collection or management of the revenue;
- (b) in any accounting by such person; or
- (c) by his written acknowledgment or confession,

that such person has, by virtue of his office or employment, received money belonging to the Crown and has neglected or refused to pay it over to the proper persons at the proper times, an affidavit deposing to such facts, taken by any

person having knowledge thereof, is, in any proceedings for the recovery of such money, admissible in evidence as *prima facie* proof of the facts stated therein. R.S.O. 1970, c. 166, s. 52.

**42.** Where by reason of any malfeasance, nonfeasance or <sup>Liability for loss</sup> misfeasance by a person employed in collecting or receiving any public money, any sum of money is lost to the Crown, such person is accountable for such sum as if he had collected and received it and it may be recovered from him as if he had collected and received it. R.S.O. 1970, c. 166, s. 53.

**43.—**(1) In this section, "Crown" includes any agency of the <sup>Interpretation</sup> Crown. R.S.O. 1970, c. 166, s. 54 (1).

(2) Where in the opinion of the Treasurer a person is <sup>Set-off</sup> indebted to the Crown in right of Ontario or in right of Canada in any specific sum of money, the Treasurer may,

(a) retain by way of deduction or set-off, out of any money that is due and payable by the Crown in right of Ontario to such person, such sum as the Treasurer sees fit in the circumstances; and

(b) pay such sum to such public officer as he thinks appropriate to receive it. R.S.O. 1970, c. 166, s. 54 (2); 1974, c. 15, s. 1.

**44.** All books, papers, accounts and documents kept or used <sup>Books, etc., property of the Crown</sup> by, or received or taken into the possession of any person who is or has been employed in connection with the collection, management, disbursement or accounting of public money, by virtue of that employment, shall be deemed to be chattels belonging to the Crown, and all money and valuable securities received or taken into the possession of any such person by virtue of his employment shall be deemed to be money and valuable securities belonging to the Crown. R.S.O. 1970, c. 166, s. 55.

**45.** Nothing in this Act affects any remedy that the Crown <sup>Nothing in this Act to impair other remedies of the Crown</sup> by virtue of any other Act or law has for recovering or enforcing the payment or delivering of any money or property belonging to the Crown and in the possession of any person or any remedy that the Crown or any person has against such person or his sureties or against any other person. R.S.O. 1970, c. 166, s. 56.



## CHAPTER 162

### Fines and Forfeitures Act

**1.** In this Act, "fine" includes all pecuniary fines, penalties and forfeitures. R.S.O. 1970, c. 167, s. 1.

Interpre-  
tation

**2.**—(1) Where a fine has been imposed for a contravention of an Act of the Legislature or a regulation made thereunder and no other provision is made for its recovery, it is recoverable with costs by a civil action at the suit of the Crown.

Recovery of  
fines  
by action

(2) Notwithstanding any general or special Act, no fine recovered for a contravention of an Act of the Legislature or a by-law or regulation made thereunder or any part of such fine shall be paid to a person acting as an informer or a prosecutor. R.S.O. 1970, c. 167, s. 2.

No fines  
payable to  
informer  
or prosecutor

**3.** Where the amount of a fine is in the discretion of a court or judge or in case a court or judge has power to impose imprisonment in addition to or in lieu of a fine and no other mode of recovery is prescribed, it may be recovered upon indictment in the Supreme Court or court of general sessions of the peace. R.S.O. 1970, c. 167, s. 3.

Recovery of  
fine by  
indictment

**4.** Every fine imposed for a contravention of any statute in force in Ontario and the proceeds of every forfeiture imposed and given to the Crown shall, where the disposal thereof is within the power of the Legislature, and except so far as other provision is made in respect thereto, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. R.S.O. 1970, c. 167, s. 4.

To whom  
fine, etc.,  
to be paid

**5.**—(1) Where a fine is imposed by or under the authority of an Act of the Legislature, the court or judge having cognizance of the proceedings for the recovery thereof may at any time after the commencement thereof remit in whole or in part such fine, whether the money is in whole or in part payable to the Crown or to some person other than the Crown and whether it is recoverable by indictment, information, summary process, action or otherwise.

Remission  
of fine  
by court or  
judge

(2) A provincial judge or justice of the peace does not have the authority mentioned in subsection (1). R.S.O. 1970, c. 167, s. 5.

Provincial  
judges  
and justices  
of the peace

Claimant  
of interest  
in personal  
property  
forfeited  
to Crown

6.—(1) Where there is a forfeiture of personal property to the Crown, any person who claims an interest in the property forfeited as owner, mortgagee, lien-holder or holder of a similar interest may, upon seven days notice to the Attorney General, apply for an order declaring his interest in the property immediately before forfeiture. R.S.O. 1970, c. 167, s. 6 (1); 1972, c. 1, s. 9 (7).

Application  
to judge

(2) An application under subsection (1) shall be made within sixty days of the date of forfeiture to a judge of the county or district court of the county or district in which forfeiture was made or in which the property was at the time of forfeiture.

Conditions  
of order

(3) On such application, where the claimant establishes to the satisfaction of the judge,

(a) that he had a *bona fide* interest in the property forfeited to the Crown; and

(b) that he exercised reasonable care with respect to the person given possession of the property to satisfy himself that the person was not likely to use the property contrary to any Act of the Legislature,

the judge shall make an order declaring the interest of the claimant in the property immediately before forfeiture. R.S.O. 1970, c. 167, s. 6 (2, 3).

Remission  
by Lieuten-  
ant  
Governor in  
Council  
R.S.O. 1980,  
c. 235

7.—(1) The Lieutenant Governor in Council may at any time remit, in whole or in part, any fine mentioned in section 5 unless it was imposed by the *Legislative Assembly Act*, or by some Act respecting the election of members to the Assembly, or is recoverable in respect of any offence committed in connection with any such election.

Relief  
against  
civil conse-  
quences of  
conviction

(2) Where a fine is remitted, the Lieutenant Governor in Council may also relieve the offender from any other penalty or forfeiture consequent upon his conviction.

Remission  
of interest  
in personal  
property

(3) Upon receipt of an order made under section 6, the Lieutenant Governor in Council may remit, in whole or in part, the interest of the person in whose favour the order was made or afford such other relief as he sees fit. R.S.O. 1970, c. 167, s. 7.

Costs not  
to be  
remitted

8. Nothing in this Act authorizes the remitting of costs incurred up to the time of remitting the penalty or forfeiture. R.S.O. 1970, c. 167, s. 8.

## CHAPTER 163

### Fire Accidents Act

1. Where, by a statute or municipal by-law, or by a regulation made under a statute or by-law, the owner, proprietor, lessee, occupant, manager or other person owning, occupying or having the control or management of a building is required to provide fire escapes, means of exit, stairways or other structures or any appliance for the safety of inmates or of the public in case of fire, and it is shown in an action brought against such person to recover damages for death occasioned by fire in such building that such requirements or any of them had not been complied with at the time of the fire, it shall be presumed that the non-compliance was the cause of the death. Onus of proof of compliance with requirements as to fire escapes, etc. R.S.O. 1970, c. 168, s. 1.



## CHAPTER 164

## Fire Departments Act

## 1. In this Act,

Interpre-  
tation

- (a) “deputy chief” means the one person who has been appointed by the council of the municipality to act in the place of the chief of the fire department in his absence or in the case of a vacancy in the office;
- (b) “fire department” means a fire department organized under the *Municipal Act* and equipped with one or more motorized fire pumpers meeting the prescribed standards; R.S.O. 1980,  
c. 302
- (c) “Fire Marshal” means the Fire Marshal of Ontario;
- (d) “full-time fire fighter” means a person regularly employed in the fire department on a full-time salaried basis and assigned exclusively to fire protection or fire prevention duties, and includes officers and technicians;
- (e) “population” means the population ascertained from the last revised assessment roll;
- (f) “prescribed standards” means the standards prescribed by the regulations;
- (g) “regulations” means the regulations made under this Act;
- (h) “volunteer fire fighter” means a person who voluntarily acts as a fire fighter for a nominal consideration or honorarium. R.S.O. 1970, c. 169, s. 1.

## PART I

2.—(1) In every municipality having a population of not less than 10,000, the full-time fire fighters assigned to fire-fighting duties shall work according to, Hours of  
work

- (a) the two-platoon system where the full-time fire fighters are divided into two platoons, the hours of work of which shall be, two-platoon  
system

- (i) for each platoon twenty-four consecutive hours on duty followed immediately by twenty-four consecutive hours off duty, or
- (ii) for one platoon in day-time ten consecutive hours on duty followed immediately by fourteen consecutive hours off duty and for the other platoon in night-time fourteen consecutive hours on duty followed immediately by ten consecutive hours off duty,

and the platoons shall alternate at least every two weeks from night work to day work and vice versa;

three-  
platoon  
system

- (b) the three-platoon system where the full-time fire fighters are divided into three platoons, the hours of work of which shall be eight consecutive hours on duty followed immediately by sixteen consecutive hours off duty, and the platoons shall rotate in their periods of duty and time off as may be arranged for the purpose of changing shifts at least every two weeks; or

alternative  
systems

- (c) any other system of platoons or hours of work under which the maximum hours of work or hours on duty on the average in any work week are not more than forty-eight hours.

Other  
personnel

- (2) Full-time fire fighters assigned to other than fire-fighting duties shall work such hours as are determined, but in no case shall such hours of work exceed the average work week of the other full-time fire fighters.

Maximum  
hours

- (3) No full-time fire fighter shall be required to be on duty on the average in any work week more than forty-eight hours.

Weekly day  
off duty

- (4) Every full-time fire fighter shall be off duty for one full day of twenty-four hours in every calendar week, but where a two-platoon system or a three-platoon system is in operation, the twenty-four hours release at the change of platoons shall not be regarded as a day off duty for the purposes of this section.

Time off  
duty

- (5) Nothing in this Act prohibits any municipality from granting the full-time fire fighters more than one day off duty in every calendar week.

Free from  
calls

- (6) The hours off duty of full-time fire fighters shall be free from fire department duties or calls.

(7) Notwithstanding this section, where a fire, flood or other disaster occurs that requires the services of every full-time fire fighter, the chief or other officer in charge of the fire department may recall to duty any full-time fire fighter who is not on duty. R.S.O. 1970, c. 169, s. 2. <sup>Recall in emergency</sup>

3. No deduction shall be made from the pay or the holidays of the full-time fire fighters by reason of this Act. R.S.O. 1970, c. 169, s. 3. <sup>Act not to affect pay or holidays</sup>

4.—(1) A full-time fire fighter shall not be discharged without being given at least seven days notice in writing of the proposed discharge and the reasons therefor, and may, before the expiry of the notice, require a hearing by delivering a notice in writing to that effect to the clerk of the municipality. <sup>Discharge</sup>

(2) Where a notice requiring a hearing is delivered under subsection (1), the council or a committee thereof shall hold a hearing and the fire fighter may be represented at the hearing by counsel. <sup>Hearing</sup>

(3) Where a fire fighter requires a hearing under subsection (2), the discharge shall not take effect before the hearing is disposed of. R.S.O. 1970, c. 169, s. 4. <sup>When discharge effective</sup>

5.—(1) When requested in writing by a majority of the full-time fire fighters, the council of the municipality shall within sixty days after receipt of the request bargain in good faith with a bargaining committee of the full-time fire fighters, and shall make every reasonable effort to come to an agreement, for the purpose of defining, determining and providing for remuneration, pensions or working conditions of the full-time fire fighters other than the chief and the deputy chief of the fire department. <sup>Bargaining</sup>

(2) In subsection (1), “pensions” includes any pension plan or payment authorized by paragraph 46 of section 208 of the *Municipal Act*. <sup>Interpretation R.S.O. 1980, c. 302</sup>

(3) Where not less than 50 per cent of the full-time fire fighters belong to a trade union, any request under subsection (1) shall be made by the union. <sup>Trade union</sup>

(4) The members of the bargaining committee shall be full-time fire fighters, but, where not less than 50 per cent of the full-time fire fighters belong to a trade union, the bargaining committee may, at all meetings held with the council of the municipality or any committee thereof for the purpose of bargaining, be accompanied by, <sup>Affiliated bodies</sup>

- (a) where the trade union is affiliated with a provincial body, one member of the provincial body; and
- (b) where the trade union is affiliated with an international body, one member of the international body,

each of whom shall attend in an advisory capacity only. R.S.O. 1970, c. 169, s. 5 (1-4).

Pension  
plans under  
R.S.O. 1980,  
c. 302

(5) When the request involves pensions under a pension plan established or to be established under the *Municipal Act*, notice of such request shall be given to the Ministry of Intergovernmental Affairs which may determine the maximum pension benefits that may be included in any agreement, decision or award with respect to such pension plan. R.S.O. 1970, c. 169, s. 5 (5); 1972, c. 3, s. 17 (2).

Board of  
arbitration

**6.**—(1) Where, after bargaining under section 5, the council of the municipality or the bargaining committee is satisfied that an agreement cannot be reached, it may by notice in writing to the bargaining committee or the council, as the case may be, require all matters in dispute to be referred to a board of arbitration of three members, in which case the council and the bargaining committee shall each appoint a member and the third member, who shall be the chairman, shall be appointed by the two members so appointed.

Failure to  
appoint  
member

(2) Where either party fails to appoint a member of the board of arbitration within thirty days, or having appointed a person who is unable or unwilling to act, fails to appoint another member within thirty days, the Solicitor General may, upon the written request of the other party, appoint a member in lieu thereof. R.S.O. 1970, c. 169, s. 6 (1, 2).

Failure to  
appoint  
chairman

(3) Where the two members of the board of arbitration appointed by the parties fail, within five days of the appointment of the one last appointed, to agree upon a third member, the Solicitor General may, upon notice in writing of such failure given to him by either of them or by either of the parties, appoint the third member. R.S.O. 1970, c. 169, s. 6 (3); 1972, c. 1, s. 95 (1).

Commence-  
ment and  
termination  
of arbitration  
proceedings

(4) The board of arbitration shall commence the arbitration proceedings within thirty days after it is constituted and shall deliver the decision or award within sixty days after the commencement of the arbitration proceedings.

(5) Any of the periods mentioned in this section may be extended at any time by agreement of the parties. Extension of periods

(6) Where upon an arbitration a majority of the members of the board of arbitration fail to agree upon any matter, the decision of the chairman upon such matter shall be deemed to be the decision of the board of arbitration. Decision

(7) Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third arbitrator equally. R.S.O. 1970, c. 169, s. 6 (4-7). Costs

**7.**—(1) Every agreement under section 5 and every decision or award under section 6 shall be in writing and is binding upon the municipality and the full-time fire fighters. Agreements, etc., to be in writing and binding on the parties

(2) Every agreement, decision or award remains in effect until the end of the year in which it comes into effect and thereafter remains in effect until replaced by a new agreement, decision or award. Duration of agreements, etc.

(3) Notwithstanding subsection (2), the parties to an agreement may provide therein or at any time before a decision or award is made with respect thereto that the agreement and any such decision or award shall remain in effect until the end of the year next following the year in which it comes into effect, in which case it remains in effect for such period and thereafter remains in effect until replaced by a new agreement, decision or award. Idem

(4) Either party to collective bargaining that has resulted in an agreement, decision or award may proceed under sections 5 and 6 at any time for a new agreement, decision or award. R.S.O. 1970, c. 169, s. 7 (1-4). New agreements, etc.

(5) Where a difference arises between the parties relating to the interpretation, application or administration of an agreement made under section 5 or of a decision or award of a board of arbitration made under section 6, or where an allegation is made that the agreement or award has been violated, either of the parties may, after exhausting any grievance procedure established by the agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration, and, if the recipient of the notice and the party desiring the arbitration do not within ten days agree upon a single arbitrator, the appointment of a single arbitrator shall be made by the Solicitor General upon the request of either party, and the arbitrator shall commence to hear and determine the difference or alle- Single arbitrator

gation within thirty days after his appointment, and shall issue a decision within a reasonable time thereafter, and such decision is final and binding upon the parties. R.S.O. 1970, c. 169, s. 7 (5); 1972, c. 1, s. 95 (2).

**Costs**

(6) Each party to an arbitration under subsection (5) shall share equally the cost of the arbitration proceedings and the cost of the arbitrator.

**Extension of periods**

(7) Any of the periods mentioned in subsection (5) may be extended at any time by agreement of the parties.

**Enforcement of decisions**

(8) Where a party, municipality, trade union or full-time fire fighter has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, municipality, trade union or full-time fire fighter affected by the decision may, after the expiration of thirty days from the date of the delivery of the decision or the date provided in the decision for compliance, whichever is later, file in the office of the Registrar of the Supreme Court a copy of the decision, exclusive of the reasons therefor, in the form prescribed by the regulations, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such. R.S.O. 1970, c. 169, s. 7 (6-8).

R.S.O. 1980,  
cc. 25, 484  
not to apply

**8.** The *Arbitrations Act* and the *Statutory Powers Procedure Act* do not apply to an arbitration under section 6 or 7 of this Act. 1974, c. 105, s. 1.

**Agreement, decision or award, when to have effect**

**9.**—(1) An agreement, decision or award has effect upon the first day of the fiscal period in respect of which the council of the municipality may include provision in its estimates for any expenditures incurred in the agreement, decision or award, whether such day is before or after the date of the agreement, decision or award, unless another day is named in the agreement, decision or award in lieu thereof.

**Idem**

(2) Where, pursuant to subsection (1), another day is named in an agreement, decision or award as the day upon which the agreement, decision or award is to have effect and such day is prior to the first day of the fiscal period in respect of which the council of the municipality may include provision in its estimates for any expenditures involved in the agreement, decision or award, any of the provisions involving expenses, notwithstanding the naming of such day, have effect from the first day of such fiscal period. R.S.O. 1970, c. 169, s. 9.

**10.** Where a request in writing is made under subsection 5 (1) <sup>Payment of expenditures</sup> during a year ending with the 31st day of December and no agreement, decision or award has resulted therefrom at the time when the council is passing its estimates in the year next following, the council shall make adequate provision for the payment of such expenditures as may be involved in the request. R.S.O. 1970, c. 169, s. 10.

**11.** This Act has effect notwithstanding any by-law or <sup>Act to prevail over municipal by-laws</sup> regulation of a municipality relating to its fire department. R.S.O. 1970, c. 169, s. 11.

**12.** Every person who requires or requests a full-time fire <sup>Offence</sup> fighter to be on duty in contravention of this Act is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$100. R.S.O. 1970, c. 169, s. 12.

## PART II

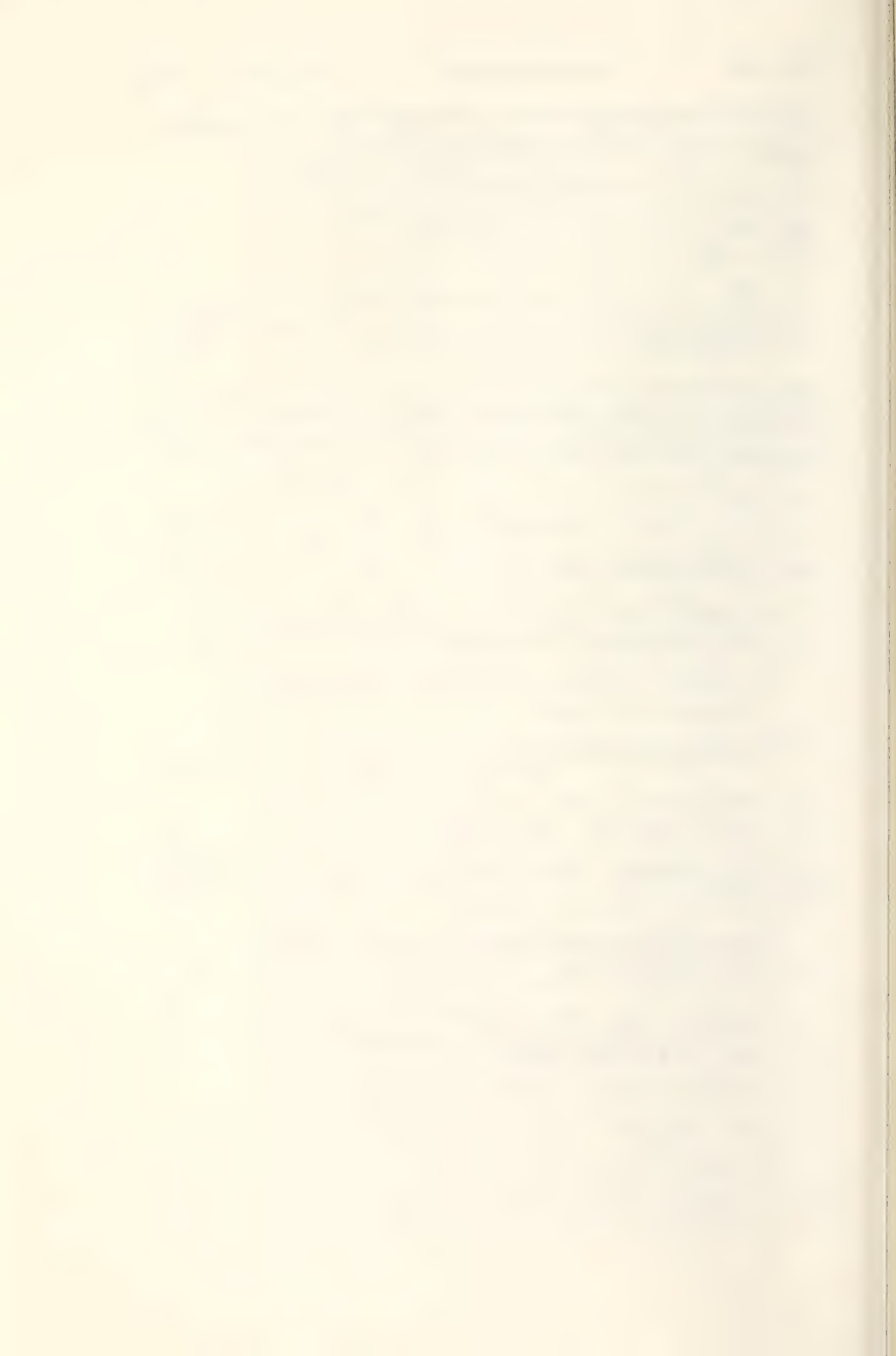
**13.** The Fire Marshal may, <sup>Fire schools</sup>

- (a) establish, maintain and operate a central fire college for the training of fire department officers;
- (b) establish and operate regional fire schools for the training of fire fighters;
- (c) provide travelling instructors for fire fighters,

and the cost thereof is payable out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 169, s. 13.

**14.** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations,

- (a) prescribing standards for fire apparatus and fire-fighting equipment;
- (b) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 169, s. 14.



## CHAPTER 165

## Fire Fighters Exemption Act

1. Whenever a company of fire fighters has been regularly enrolled in a municipality with the approval of the council of the municipality, the council shall direct the clerk to grant to each member of the company a certificate that he is enrolled in the company, which certificate exempts the person named therein, during the period of his enrolment and his continuance in actual duty, from serving as a juror or a constable. R.S.O. 1970, c. 170, s. 1.

2.—(1) Upon complaint to the council of neglect of duty by a member of such fire company, the council shall examine into the complaint and, for any such cause and also in case a member of the company is convicted of a breach of any of the rules legally made for the regulation of the company, may, after a hearing, strike off the name of any such member from the list of the company and thenceforward the certificate granted to the member has no effect in exempting him from any duty or service.

(2) The member of the fire company against whom the complaint has been made and the complainant, if any, are parties to a hearing under subsection (1). 1971, c. 50, s. 39.



## CHAPTER 166

### Fire Marshals Act

#### 1. In this Act,

Interpre-  
tation

- (a) "fire department" means a fire department organized under the *Municipal Act* and equipped with one or more motorized fire pumpers; R.S.O. 1980, c. 302
- (b) "Fire Marshal" means the Fire Marshal of Ontario;
- (c) "member" means,
- (i) a person regularly employed in a fire department on a full-time salary basis and assigned exclusively to fire protection or fire prevention duties, and includes officers and technicians, or
  - (ii) a person who voluntarily acts as a fire fighter for a nominal consideration or honorarium, or
  - (iii) a person who has been appointed as an auxiliary member of a fire department;
- (d) "Minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (e) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 172, s. 1.

2.—(1) There shall be an officer to be known as the Fire Appointment of Fire Marshal Marshal, who shall be appointed by the Lieutenant Governor in Council.

(2) There shall be an officer to be known as the Deputy Fire Deputy Fire Marshal Marshal, who shall be appointed by the Lieutenant Governor in Council and who shall act in the stead of the Fire Marshal in the absence of or during the illness or incapacity of the Fire Marshal, or in the case of a vacancy in the office,

and who, when so acting, has all the power and authority of the Fire Marshal, and who shall exercise such powers and perform such duties for the prevention or investigation of fire or the protection of life and property from fire as the Lieutenant Governor in Council considers expedient or as are prescribed by the regulations.

District  
deputy fire  
marshals

(3) The Lieutenant Governor in Council may appoint such number of persons as he considers necessary to be district deputy fire marshals, who shall, subject to the regulations and the direction and control of the Fire Marshal, possess the powers to perform the duties of the Fire Marshal in the respective localities for which they are appointed.

Inspectors,  
appointment

(4) The Lieutenant Governor in Council may appoint inspectors who, under the direction of the Fire Marshal, shall investigate the cause, origin and circumstances of fires occurring in Ontario and perform such other duties as are provided by this Act and the regulations, and while so acting every inspector is subject to the regulations and possesses the same powers as the Fire Marshal.

Fire  
services  
instructors

(5) The Lieutenant Governor in Council may appoint fire services instructors who, under the direction of the Fire Marshal, shall assist in the organization and training of municipal fire departments and in the development of other fire prevention programs and shall perform such other duties as are imposed by this Act or the regulations.

Officers and  
assistants

(6) The Lieutenant Governor in Council may also appoint such officers, clerks and servants as are considered necessary for carrying out and enforcing this or any other Act of Ontario relating to the prevention and investigation of fire, and the regulations.

Salaries

(7) The Fire Marshal, Deputy Fire Marshal, district deputy fire marshals, inspectors and other officers, clerks and servants shall receive such salaries or other remuneration as is fixed by the Lieutenant Governor in Council.

Salaries and  
expenses,  
how payable

(8) The salaries and other remuneration and the expenses incurred in investigations and in the exercise of the powers and duties conferred and imposed upon the officers and assistants to the Fire Marshal or other persons in the prevention or investigation of fires, and generally all expenses incurred in carrying out this Act and the regulations are payable out of the moneys that are appropriated by the Legislature for salaries and expenses under this Act.

(9) The Lieutenant Governor in Council may direct the payment out of the appropriation made by the Legislature for salaries and expenses in connection with this Act of a grant to any association or league or society organized for the purpose of fire prevention, and such a grant may be subject to such terms and conditions as the Lieutenant Governor in Council considers proper. R.S.O. 1970, c. 172, s. 2.

**3.** Subject to the regulations and for the prevention and investigation of fire, it is the duty of the Fire Marshal and he has power,

- (a) whenever he has reason to believe that the council of a municipality has not passed a by-law under the authority of any of the sections of the *Municipal Act* or any other Act relating to the prevention of fire or protection of life and property therefrom, or that the by-law that has been passed by a municipal council is not complete or is not being enforced, to confer with members or officers of the council and to assist them as far as is expedient and practicable in preparing, improving and enforcing the by-law; R.S.O. 1980, c. 302
- (b) to assist members of municipal councils and municipal officers in the formation and organization of fire departments, to make recommendations with regard to equipment, operations, duties and administration of fire departments, and in the preparation of by-laws relevant thereto;
- (c) to require the chief of the fire department of a municipality or any other person who is designated as an assistant of the Fire Marshal to assist in the enforcement of the by-law;
- (d) to disseminate information and advice as to the prevention of fire by means of public meetings, newspaper articles, pamphlets, exhibitions and moving picture films and otherwise as he considers advisable;
- (e) to assist in the formation of local associations or leagues and to co-operate with any body or persons interested in developing and promoting the principles and practices of fire prevention and fire protection;
- (f) to advise and assist ministries and agencies of government in fire prevention and fire protection problems;

- (g) to keep a record of every fire reported to him with such facts, statistics and circumstances as are required by the regulations;
- (h) to investigate the cause, origin and circumstances of any fire so reported to him and so far as it is possible determine whether it was the result of carelessness or design;
- (i) on the instructions of the Minister, to investigate the cause, origin and circumstances of any explosion or of any conditions that in the opinion of the Minister might have caused fire, explosion, loss of life or damage to property and so far as possible determine whether the explosion was or conditions were the result of carelessness or design;
- (j) to report to the Crown attorney of the proper county or district the facts found upon the evidence in any case in which he has reason to suppose that loss by fire has been occasioned by criminal negligence or design or in which he considers an offence has been committed against this Act;
- (k) whenever he considers it advisable in the public interest, to order the withholding of insurance money that may become payable by reason of any fire for a period not exceeding sixty days from the occurrence of the fire pending an investigation of its cause and circumstances;
- (l) to enter upon, examine and inspect from time to time hotels, apartment houses, factories, work shops and other places where persons reside or are employed in numbers, and direct such alterations to be made and such precautions to be taken as he considers necessary for the purpose of complying with any statute or regulation made for the better protection of life and property in such buildings. R.S.O. 1970, c. 172, s. 3; 1972, c. 1, s. 2.

Appointment  
of auxiliary  
fire fighters  
R.S.O. 1980,  
c. 302

4.—(1) An authority empowered by the *Municipal Act* to appoint members of a fire department may appoint a number of auxiliary members not exceeding the number of other members of the fire department. R.S.O. 1970, c. 172, s. 4 (1).

(2) The Lieutenant Governor in Council may appoint such persons as he considers necessary, who shall function under the direction and control of the Fire Marshal and shall receive such remuneration and expenses as are fixed by the Lieutenant Governor in Council. R.S.O. 1970, c. 172, s. 4 (3).

(3) The relationship between a member of a fire department and the municipality by which he is employed continues for the purposes of the *Workmen's Compensation Act* as if this section had not been passed. R.S.O. 1970, c. 172, s. 4 (5).

5. For the purpose of any inquiry or investigation that it is his duty or which he has the power to hold under this Act, the Fire Marshal has and may exercise all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry or investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 172, s. 5; 1971, c. 49, s. 18.

6. Subject to the approval in writing of the Minister, the Fire Marshal may by writing under his hand appoint any person his deputy *pro tempore* for the purpose of holding an investigation into the cause, origin and circumstances of any fire, and for that purpose, the deputy *pro tempore* has all the powers of the Fire Marshal under this Act and the regulations. R.S.O. 1970, c. 172, s. 6.

7. With the approval of the Minister, the Fire Marshal may employ such legal, technical, scientific, clerical or other assistance as he considers advisable or necessary in the conduct of any investigation held under this Act or in carrying out the provisions of this Act relating to the prevention of fire or in the exercise and performance of his powers and duties. R.S.O. 1970, c. 172, s. 7.

8.—(1) The chief of the fire department of every municipality that has a fire department and the clerk of every other municipality is by virtue of the office held by him an assistant to the Fire Marshal, and it is the duty of every assistant to the Fire Marshal to act under his direction in carrying out this Act.

(2) The assistants to the Fire Marshal shall report to him in writing, on forms to be supplied by him, all the fires occurring

in their respective municipalities within three days after receiving information of the fire and including therein particulars of all fatalities and injuries sustained by persons in such fires.

Fees of  
assistants

(3) Except in the case of a municipality where the chief of the fire department is paid an annual salary of more than \$500 by the corporation of the municipality, every such assistant of the Fire Marshal shall be paid, upon the certificate of the Fire Marshal and out of the moneys that are appropriated by the Legislature for salaries and expenses in connection with this Act, the sum of \$1 for each report.

Assistants  
to the Fire  
Marshal

(4) Where in a municipality a fire prevention bureau has been established or the chief of the fire department of a municipality has designated one or more members of the fire department as a fire prevention officer or officers or the Fire Marshal has so designated any other person, every person who is a member of the bureau or who is so designated is an assistant to the Fire Marshal and has all the powers of an assistant to the Fire Marshal under this Act.

Powers of  
chief outside  
municipality

(5) The chief of the fire department of a municipality has the same powers and duties with respect to buildings or premises outside the territorial limits of the municipality as if the buildings or premises were situate within the municipality,

(a) if the buildings or premises are owned or used by the municipality; or

(b) if the municipality has undertaken to provide fire protection for the buildings or premises. R.S.O. 1970, c. 172, s. 8.

Fire  
insurance  
companies,  
duty to  
report

**9.—(1)** Every fire insurance company authorized to transact business in Ontario shall report to the Fire Marshal, through the secretary or some other officer of the company designated by the board of directors for that purpose, all fire losses on property insured in the company, giving the date of the fire and such other particulars as are required by the regulations.

Transmitting  
reports

(2) The report shall be mailed to the Fire Marshal within three days after notice of loss is received by the company.

Reporting  
losses  
adjusted

(3) Every such company shall also report to the Fire Marshal the amount of the loss as adjusted on each fire after the adjustment is made.

(4) Every person sustaining or claiming to have sustained a loss by fire on property in Ontario insured wholly or partially in an insurance company not licensed or registered under the *Insurance Act* shall report to the Fire Marshal within three days after the occurrence of the fire the particulars of the insurance, the date of the fire, and such other information as is called for by the regulations, and he shall also, within ten days after completing proofs of loss against the company in which he is so insured, file with the Fire Marshal a full statement of the amount of loss claimed from every such company.

Particulars  
of fire to be  
furnished  
by insured  
R.S.O. 1980,  
c. 218

(5) Every person sustaining a loss by fire on property in Ontario shall, upon the written or oral request of an assistant to the Fire Marshal, furnish to the assistant within seven days after receipt of the request whatever information is required to complete the form of report called for in subsection 8 (2).

Claimant on  
loss to  
furnish  
information  
to Fire  
Marshal's  
assistant

(6) Every person adjusting a claim against a fire insurance company, whether the company is licensed to transact business in Ontario or not and whether the adjuster represents the company or the claimant, shall within three days after the completion of the adjustment forward a report in writing to the Fire Marshal, giving the date of the fire, the value of the property affected by the different items of the policy as established during the process of the adjustment of the claim, the insurance in each company, the amount of loss allocated to be paid by each company and such other particulars as are required by the regulations.

Adjusters  
to furnish  
report on  
loss to Fire  
Marshal

(7) Every person adjusting a claim against a fire insurance company in a municipality having an organized fire department shall, where the fire department has not been summoned to or attended at the fire giving rise to the claim, by notice in writing, advise the chief of the fire department of the occurrence of the fire. R.S.O. 1970, c. 172, s. 9.

Fire chief  
to be  
notified  
of claim

**10.** Nothing in this Act renders it obligatory for the Fire Marshal to perform in a local municipality such of the duties prescribed by this Act as are provided for by by-laws of the local municipality. R.S.O. 1970, c. 172, s. 10.

Saving as  
to duties  
provided  
for by  
municipal  
by-law

**11.** The Fire Marshal shall keep such registers and books of account as are prescribed by the Lieutenant Governor in Council. R.S.O. 1970, c. 172, s. 12.

Books

**12.** The Fire Marshal, Deputy Fire Marshal or a district deputy fire marshal, inspector or municipal fire chief has power,

Examination  
and closing  
of premises

- (a) to enter and examine any premises on which a fire has occurred or on which he has reason to believe there may be a substance or device likely to cause a fire;
- (b) to close such a premises and to prevent entry thereon by any other person for such period as is required to complete the examination of the premises; and
- (c) to remove from such a premises and to retain and examine any article or material that in his opinion may be of assistance in connection with any matter under investigation. R.S.O. 1970, c. 172, s. 13.

Power to  
obtain  
evidence

**13.** The Fire Marshal, the Deputy Fire Marshal, district deputy fire marshals and inspectors have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases. R.S.O. 1970, c. 172, s. 14.

Duty of  
witnesses  
to give  
evidence

**14.** Every person upon being served with a summons under the hand of the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector to attend for the purposes of giving evidence shall attend in pursuance of the summons, and is entitled to be paid such fees and expenses as are prescribed by the regulations. R.S.O. 1970, c. 172, s. 15.

Offences:

**15.** Every person who,

obstructing

- (a) hinders or disturbs the Fire Marshal or any officer appointed under this Act in the execution of his duties;

contraven-  
ing Act

- (b) contravenes any of the provisions of this Act or the regulations;

failure  
to give  
evidence

- (c) refuses or neglects to attend and be sworn and give evidence before the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector; or

disobedience  
to orders  
of Fire  
Marshal

- (d) refuses or neglects to obey or carry out the instructions or directions of the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal or inspector given under the authority of this Act,

is guilty of an offence and, where a penalty for such offence is not elsewhere in this Act provided for, on conviction, is liable to a fine of not more than \$20, but the imposition of any such fine or the payment thereof does not relieve a person convicted from fulfilling any obligation for the neglect of which the penalty was imposed. R.S.O. 1970, c. 172, s. 16.

**16.**—(1) It is the duty of the Crown attorney of every county or district, upon receiving the report of the Fire Marshal or upon receiving notice of an offence having been committed against any of the provisions of this Act or the regulations, to institute and conduct a prosecution of any person who appears to have been guilty of an offence against the *Criminal Code* (Canada) or against this Act or the regulations.

Duty of  
Crown  
attorney to  
prosecute

R.S.C. 1970,  
c. C-34

(2) Upon the request of the Fire Marshal, it is the duty of the Crown attorney of the county or district to attend any investigation held under this Act and to examine the witnesses at the investigation and assist the Fire Marshal in the conduct of the investigation.

Crown  
attorney to  
attend at  
investigation

(3) If the investigation is held in a place other than the county or district town, the Crown attorney is entitled to his actual disbursements for travelling and other expenses.

Travelling  
expenses,  
etc., when  
allowed

R.S.O. 1970, c. 172, s. 17.

**17.** The fees and expenses as certified by the Fire Marshal to be payable to the Crown attorney or to witnesses or for assistance given or services rendered to the Fire Marshal under this Act are payable out of the moneys that are appropriated by the Legislature for salaries and expenses in connection with this Act. R.S.O. 1970, c. 172, s. 18.

Payment of  
fees and  
expenses  
out of  
appropriation

**18.**—(1) Subject to the regulations, the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may, upon the complaint of a person interested, or when he considers it necessary so to do, without such complaint, inspect all buildings and premises within his jurisdiction, and for such purpose may at all reasonable hours enter into and upon the buildings and premises for the purpose of examination, taking with him, if necessary, a constable or other police officer or such other assistants as he considers proper.

Inspection  
of buildings  
and premises

(2) If, upon such inspection, it is found that a building or other structure is for want of proper repair or by reason of age and dilapidated condition or any other cause especially liable to fire, or is so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein or that exits from the building or buildings are inadequate or improperly used, or that there are in or upon the buildings or premises combustible or explosive materials or conditions dangerous to the safety of the buildings or premises or to adjoining property, the officer making the inspection may order,

Orders on  
inspection

- (a) the removal of the buildings or the making of structural repairs or alterations therein;
- (b) the removal of combustible or explosive material, or the removal of anything that may constitute a fire menace;
- (c) the installation of safeguards by way of fire extinguishers, fire alarms and other devices and equipment and also such avenues of egress, fire escapes and exit doors as are considered necessary to afford ample exit facilities in the event of fire or an alarm of fire.  
R.S.O. 1970, c. 172, s. 19 (1, 2).

Electrical  
installations

(3) If, upon such inspection, it is found that a building or other structure is by reason of the inadequacy or want of repair of the electrical installations and wiring therein especially liable to fire, the officer making the inspection may order a reinspection by Ontario Hydro of such electrical installations and wiring and that the cost of such reinspection be paid by the owner or occupant of the building or other structure.  
R.S.O. 1970, c. 172, s. 19 (3); 1973, c. 57, s. 19.

Removal of  
process from  
buildings

(4) The Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may order the removal from any building not being of fire-resistive construction or being within fifty feet of a hospital, school, church, theatre or any other place of public assembly or a hotel, apartment house or multiple occupancy dwelling, of a process of manufacture or other occupancy that because of the danger of fire or explosion is especially hazardous to life or property or may order that any such premises shall not be used for any such process or occupancy.

Appeal to  
Fire Marshal

(5) If the occupant or owner of any such building or premises deems himself aggrieved by an order made by an officer other than the Fire Marshal under this section, then in case the order is made under clause (2) (a) or subsection (4), the person aggrieved may appeal within ten days from the making of the order to the Fire Marshal, who shall examine the order and affirm, modify or revoke it and prepare written reasons for his decision and cause a copy of his decision and the reasons therefor to be served upon the party appealing.

Appeal from  
Fire Marshal  
to county  
judge

(6) If the party appealing is dissatisfied with the decision of the Fire Marshal, he may, within five days after the service of the decision, apply by way of originating notice according to the practice of the court, to the judge of the county or district court of the county or district in which the property

is situate, for an order modifying or revoking the order or extending the time for compliance therewith, and the judge, upon such application, may affirm, modify or revoke the order and his decision is final.

(7) If the appeal to the county or district judge is not prosecuted by the appellant within sixty days from the filing of the originating notice, the county or district judge may dismiss the appeal at the request of the Fire Marshal.

Failure to  
prosecute  
appeal

(8) In the case of an order made under clause (2) (b) or (c) or under subsection (3) by an officer other than the Fire Marshal, the occupant or owner has the like right of appeal to the Fire Marshal as in the case of an order made under clause (2) (a), and the Fire Marshal shall prepare written reasons for his decision and cause a copy of his decision and the reasons therefor to be served upon the person appealing, and the decision of the Fire Marshal upon the appeal is final and is not subject to appeal.

When  
appeal to  
Fire Marshal  
is final

(9) Every person who fails to obey an order made under clause (2) (a) or under subsection (4) after the time allowed for appeal therefrom has elapsed is guilty of an offence and on conviction is liable to a fine of not less than \$10 in all and not more than \$100 for every day during which such default continues, and every person who fails to obey an order made under clause (2) (b) or (c) or under subsection (3) is guilty of an offence and on conviction is liable to a fine of not less than \$10 in all and not more than \$20 for each day which such default continues. R.S.O. 1970, c. 172, s. 19 (4-9).

Offences

(10) The imposition of a fine or the payment thereof does not relieve a person convicted from fulfilling any obligation for the neglect of which the penalty was imposed. R.S.O. 1970, c. 172, s. 19 (10), *revised*.

Manner of  
collecting

(11) If the obligation for the neglect of which the fine was imposed on a person is not fulfilled within thirty days after the conviction, the provincial offences court, on the application of the Fire Marshal, may order the closing of any premises where the danger of fire or explosion is especially hazardous to life or property until such time as the obligation for which the fine was imposed is fulfilled.

Closing of  
premises

(12) Where the person does not remedy the conditions for which a conviction was made within thirty days after conviction, the provincial offences court may issue an order authorizing the Fire Marshal to remove the building or combustible or explosive material or anything that may constitute a fire menace and the expenses so incurred shall be paid as in subsections (14) and (15).

Removal of  
hazard by  
Fire Marshal

Action in  
absence of  
owner of  
premises

(13) If the owner is absent from or is a non-resident of Ontario or his whereabouts in Ontario is unknown and there is no occupant of the building or premises, or his whereabouts in Ontario is unknown, the Fire Marshal may direct and procure,

(a) the removal of the buildings;

(b) the removal of combustible or explosive material, or the removal of anything that may constitute a fire menace,

in such manner as he considers proper, but no expense shall be incurred for such purpose beyond the amount of \$100 without the approval of the Minister.

Expenses,  
payment

(14) The expense so incurred shall be paid in the first instance out of any appropriation of the Fire Marshal's office.

Collection

(15) The Fire Marshal shall certify to the treasurer of the municipality in which the building, premises or structure is situate the expenses actually and necessarily incurred, and the treasurer shall forthwith pay the amount so certified to the Treasurer of Ontario, and the amount may be entered upon the collector's roll against the land or premises in relation to which action was so taken and constitutes a lien thereon and be levied and collected as taxes against the land or premises.

Minor  
alterations  
and repairs

(16) If the owner of a building or premises is absent from or does not reside in the municipality in which the building or premises is situate, or his whereabouts in the municipality is unknown, the Fire Marshal, Deputy Fire Marshal, a district deputy fire marshal, an inspector or an assistant to the Fire Marshal may order the tenant or occupant to make minor alterations or repairs that are urgently required for purposes of fire prevention and the tenant or occupant may deduct the cost of the alterations or repairs from any rent thereafter payable on furnishing the owner with a copy of the order and an accounting of the amount deducted, but a tenant or occupant shall not be required to expend or expend in any year an amount in excess of 25 per cent of the annual rental payable in respect of such tenancy or occupancy. R.S.O. 1970, c. 172, s. 19 (11-16).

Power to  
suspend  
deputy or  
other official

**19.—**(1) The Fire Marshal may suspend from duty a district deputy fire marshal or other official for such cause as he considers sufficient and shall report the suspension immediately to the Minister.

(2) The pay of such district deputy fire marshal or other official shall not be allowed during the period of suspension, except by order in writing of the Minister. R.S.O. 1970, c. 172, s. 20.

Pay to  
cease during  
suspension

**20.**—(1) Subject to the regulations, the Fire Marshal shall, from time to time as is found necessary for the prevention of fire and for safeguarding human life from the danger of fire, adopt rules for the use, storage and handling of explosives and volatile compounds, including crude and refined illuminating and fuel oil and all the devices and apparatus employed in utilizing the same, but such rules are not effective until approved by the Lieutenant Governor in Council.

Fire  
Marshal  
may adopt  
rules for  
prevention  
of fire

(2) Where a municipality has passed a by-law under paragraphs 9 to 17 of section 210 of the *Municipal Act* regulating the keeping and manufacturing of explosives, the requirements of the by-law, if more exacting than those approved by the Lieutenant Governor in Council under this section, govern and apply to properties in the municipality. R.S.O. 1970, c. 172, s. 21.

Municipal  
by-law to  
take  
precedence  
R.S.O. 1980,  
c. 302

**21.** No municipality shall have, and no person shall have in connection with any fire apparatus or fire-fighting equipment that is installed on any premises, couplings for 1½-inch fire hose or other fittings used in connection with such couplings that are not of the iron pipe standard thread of 11½ threads an inch and that do not conform to the standards and specifications for such couplings and fittings contained in the Canadian Standards Association specification for 1½-inch fire hose coupling screw thread and tail piece internal diameters B89—1954 (2nd edition). R.S.O. 1970, c. 172, s. 22.

Coupling  
standards  
for 1-1/2-inch  
fire hose

**22.** No municipality shall have, and no person shall have in connection with any fire apparatus or fire-fighting equipment that is installed on any premises, couplings for 2½-inch fire hose or other fittings used in connection with such couplings that do not have 5 threads an inch and 3⅛-inch outside diameter of the male coupling and that do not conform to the standards and specifications for such couplings and fittings contained in the Canadian Standards Association specification for 2½-inch fire hose couplings and fittings B89.2—1954 (2nd edition). R.S.O. 1970, c. 172, s. 23.

Coupling  
standards  
for 2-1/2-inch  
fire hose

**23.** No municipality or body in which is vested the management and control of hydrants shall have, and no person shall have in connection with any fire apparatus or fire-fighting equipment that is installed on any premises, hydrants with 2½-inch nozzles that do not conform to the thread standards and specifications referred to in section 22 or

Hydrant  
standards

operating nuts that are not square in shape with an over-all dimension on each side of  $1\frac{1}{4}$  inches and a depth of not less than  $1\frac{1}{4}$  inches. R.S.O. 1970, c. 172, s. 24.

## Offence

**24.** Every person, municipality or body in which is vested the management and control of hydrants that contravenes any of the provisions of section 21, 22 or 23 is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$100 for each day upon which the couplings, fittings or hydrants do not conform to the standards and specifications referred to in such sections, and in addition the Fire Marshal may take proceedings by way of mandamus to compel such person, municipality or body to comply with such standards and specifications. R.S.O. 1970, c. 172, s. 25.

## Regulations

**25.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing the respective duties of the Fire Marshal, Deputy Fire Marshal, district deputy fire marshals and inspectors, and of the officers, clerks and servants of the Fire Marshal's office;
- (b) fixing the forms of and particulars to be stated in the records and returns to be made by the Fire Marshal, Deputy Fire Marshal, and district deputy fire marshals, and by every person who is required under this Act to furnish information to the Fire Marshal;
- (c) requiring such statistical and other information to be furnished to the Fire Marshal as he considers necessary;
- (d) providing for the appointment of an advisory committee and defining the duties and powers of the committee;
- (e) providing for licensing and regulating the manufacture, sale, servicing and recharging of fire extinguishers;
- (f) prescribing the methods of fire prevention to be used in any class of premises or premises used for any specified purpose;
- (g) prescribing the types, location and testing of fire-fighting apparatus, equipment and devices and fire alarm systems to be used in any class of premises or premises used for any specified purpose;

- (h) regulating, subject to the *Gasoline Handling Act*,<sup>R.S.O. 1980,  
c. 185</sup> the manner and method of handling and storing flammable liquids or gases in any class of premises or premises used for any specified purpose;
- (i) providing long service awards for members of the public fire services;
- (j) prescribing the forms, records and returns to be used, kept and made by fire chiefs in respect of their inspections of any class of premises or premises used for any specified purpose;
- (k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.  
R.S.O. 1970, c. 172, s. 26.

**26.** A certificate under the hand and seal of the Fire Marshal of the appointment of a person under this Act is *prima facie* proof of the appointment in any court or elsewhere.  
R.S.O. 1970, c. 172, s. 27.

Certificate of  
appointment



## CHAPTER 167

## Fish Inspection Act

## 1. In this Act,

Interpretation

- (a) "container" means any type of receptacle, package, wrapper or confining band used in holding, storing, packing or marketing fish;
- (b) "establishment" means a place where fish are handled, graded, processed or stored;
- (c) "fish" includes a shellfish, crustacean and any marine animal, and any parts, products or by-products of any of them;
- (d) "inspector" means a person appointed by the Minister as an inspector under this Act or a person declared to be an inspector, *ex officio*, under this Act and includes a conservation officer appointed under section 7 of the *Game and Fish Act*;
- (e) "marketing" means buying, selling, holding in possession, or offering or advertising for sale;
- (f) "Minister" means the Minister of Natural Resources;
- (g) "processing" includes cleaning, filleting, icing, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other way;
- (h) "regulations" means the regulations made under this Act;
- (i) "vehicle" includes a steamship, vessel, boat, railway-car, truck, carriage, car, aircraft and any other means of carriage used for transporting fish. R.S.O. 1970, c. 174, s. 1; 1971, c. 19, s. 1; 1972, c. 4, s. 12.

R.S.O. 1980,  
c. 182

2.—(1) The Minister may appoint an inspector or inspectors who shall perform such duties as may be prescribed by this Act or the regulations.

Appointment of inspectors

(2) The Lieutenant Governor in Council may declare that inspectors appointed under the *Fish Inspection Act* (Canada) are inspectors, *ex officio*, under this Act. R.S.O. 1970, c. 174, s. 2.

Idem  
R.S.O. 1970,  
c. F-12

Powers of  
inspector

**3.**—(1) An inspector may at any time,

- (a) enter any establishment or vehicle used for the storage or carriage of fish and open any container that he has reason to believe contains fish;
- (b) require to be produced for inspection or for the purpose of obtaining copies thereof, or extracts therefrom, any books, shipping bills, bills of lading or other documents or papers relating to the processing, transporting or marketing of fish; or
- (c) take samples of fish for inspection.

## Obstruction

(2) No person shall obstruct or impede an inspector in the discharge of his duties under this Act. R.S.O. 1970, c. 174, s. 3.

## Appeal

**4.** Any person who thinks himself aggrieved by a decision of an inspector in respect of any matter under this Act or the regulations may appeal to the Minister in accordance with the procedure prescribed in the regulations. R.S.O. 1970, c. 174, s. 4.

Seizure of  
fish and  
containers

**5.**—(1) Whenever an inspector believes on reasonable grounds that an offence against this Act or the regulations has been committed, he may seize all fish and containers by means of or in relation to which he reasonably believes the offence was committed.

Detention  
of fish  
and  
containers

(2) All fish and containers seized under subsection (1) may be detained for a period of two months following the day of seizure, unless during that period proceedings under this Act in respect of such fish and containers are taken, in which case the fish and containers may be further detained until such proceedings are finally concluded. R.S.O. 1970, c. 174, s. 5 (1, 2).

Disposal  
of fish  
seized

(3) Where a person is convicted of an offence under this Act or the regulations, any fish or containers seized under subsection (1) by means of or in relation to which the offence was committed shall be ordered to be forfeited to Her Majesty by the court convicting such person and may be disposed of as the Minister directs.

Where offence  
deemed com-  
mitted in  
relation to  
fish seized

(4) Where a person pleads guilty to an offence against this Act or the regulations and fish or containers were seized under subsection (1) by an inspector as being fish or containers by means of or in relation to which the offence was committed, it shall be presumed by the court convicting such person, in the absence of evidence to

the contrary, that the offence was committed by means of or in relation to such fish or containers. 1971, c. 50, s. 40 (1).

**6.**—(1) No person shall falsify or unlawfully alter, destroy, <sup>Falsification, etc., of</sup> erase or obliterate any document made or issued under this Act <sup>documents</sup> or the regulations, or any marks placed on any container pursuant to this Act or the regulations.

(2) Every person who contravenes subsection (1) is guilty of an <sup>Offence</sup> offence and is liable on conviction to a fine of not less than \$50 and not more than \$500, or to imprisonment for a term of not less than two months and not more than six months, or to both. R.S.O. 1970, c. 174, s. 6.

**7.**—(1) No person shall sell, offer for sale, or hold in <sup>Fish for sale to be fit for human consumption</sup> possession for sale, any fish intended for human consumption that is tainted, decomposed or unwholesome. 1971, c. 19, s. 2.

(2) Every person who contravenes subsection (1) is guilty of an <sup>Offence</sup> offence and is liable on conviction to a fine of not less than \$100 and not more than \$500, or to imprisonment for a term of not less than three months and not more than six months, or to both. R.S.O. 1970, c. 174, s. 7 (2).

**8.** No person shall sell, offer for sale, or hold in possession <sup>Sale or possession under misleading name</sup> for sale, any fish or container under a name calculated to mislead or deceive. R.S.O. 1970, c. 174, s. 8.

**9.** Every person who contravenes any of the provisions of <sup>General penalty</sup> this Act or of the regulations or any condition attached to any licence issued under this Act or the regulations for which no penalty is elsewhere provided in this Act or the regulations is guilty of an offence and liable on conviction to a fine of not more than \$500, or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 174, s. 9.

**10.** Every offence against this Act or the regulations and <sup>Where offences deemed to have been committed</sup> every contravention of any of the conditions of any licence issued under this Act or the regulations, for the purposes of any prosecution, shall be deemed to have been committed, and every cause of complaint under this Act or the regulations or any of the conditions of any licence issued under this Act or the regulations shall be deemed to have arisen in the place where the offence was actually committed or the place where it was first discovered by an inspector or the place where the defendant resides or is found. R.S.O. 1970, c. 174, s. 10.

Disposal of  
fines, etc.

**11.** The Lieutenant Governor in Council may provide for the disposition of fines imposed for contraventions of this Act or the regulations and for the disposition of any proceeds from the sale of forfeited fish or containers. R.S.O. 1970, c. 174, s. 11.

Adoptions  
of  
regulations  
under  
R.S.C. 1970,  
c. F-12

**12.** The Lieutenant Governor may by proclamation declare any regulations heretofore or hereafter made under the *Fish Inspection Act* (Canada), in so far as they are within the exclusive legislative jurisdiction of the Province of Ontario, to have the force of law therein, and upon the issue of such proclamation the regulations therein referred to, in so far as they are within the exclusive legislative jurisdiction of the Province of Ontario, have the force of law therein as if enacted by the Legislature. R.S.O. 1970, c. 174, s. 13.

Regulations

**13.—**(1) The Lieutenant Governor in Council may, for the purpose of regulating the marketing of fish and containers locally within Ontario, make regulations,

- (a) prescribing grades, qualities and standards of fish for marketing;
- (b) prohibiting or regulating the marketing of fish that are not inspected or that are below any prescribed grade, quality or standard;
- (c) defining for the purposes of section 7, the expressions "tainted", "decomposed" and "unwholesome";
- (d) respecting the handling, processing, storing, grading, packaging, marking, transporting and inspecting of fish;
- (e) respecting the quality and specifications for containers and the marking and inspecting of containers;
- (f) prescribing the duties of inspectors;
- (g) requiring and governing the issue, form, renewal, transfer, refusal and cancellation of licences for establishments and persons handling, processing, storing, grading, transporting or marketing fish, prescribing their duration, territorial limitations and terms and conditions and exempting classes of establishments and persons;
- (h) prescribing fees for licences, and for grading and inspection services;
- (i) governing the requirements for the equipment and sanitary operation of establishments, and of vehicles

used in connection with an establishment or in connection with fishing or the marketing of fish;

(j) prohibiting the marketing of fish or containers under a grade name or standard prescribed by the regulations unless all the requirements of this Act and the regulations with respect thereto have been complied with;

(k) prescribing the manner in which samples of fish may be taken;

(l) prescribing the procedure to be followed in any appeal to the Minister under this Act;

(m) providing for any thing connected with the marketing or inspection of fish and containers locally within Ontario. R.S.O. 1970, c. 174, s. 14 (1); 1971, c. 19, s. 3.

(2) Any regulation may be limited as to area, species of fish, time or otherwise. R.S.O. 1970, c. 174, s. 14 (2). Application  
of  
regulations



## CHAPTER 168

## Fisheries Loans Act

**W**HEREAS by reason of the contamination of fish <sup>Preamble</sup> resulting from the pollution of waters in Ontario it has and may become necessary to prohibit the taking of fish in waters in Ontario;

AND WHEREAS the prohibition of the taking of fish has created and may create temporary financial hardships to persons engaged in commercial fishing and other businesses dependent in whole or in part on the taking of fish;

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

**1.** In this Act, "Minister" means the Minister of Natural <sup>Interpre-</sup> Resources. R.S.O. 1970, c. 175, s. 1; 1972, c. 4, s. 12.

**2.—(1)** The Minister on behalf of Her Majesty in right of <sup>Loans</sup> Ontario may make loans with or without interest in such amounts and upon such terms and conditions as he considers appropriate to a person carrying on the business of commercial fishing or any other business dependent in whole or in part on the taking of fish from waters in which such taking has been prohibited by reason of the contamination of fish resulting from pollution of the waters.

**(2)** Where the Minister takes any action under this section, <sup>Minister to table report</sup> he shall, quarterly or at the first appropriate time when the Assembly is sitting, table a report in connection with such action and set out clearly in such a report the basis of the terms and conditions he considers appropriate in taking any such action. R.S.O. 1970, c. 175, s. 2.

**3.** The Minister may on behalf of the Province of Ontario <sup>Agreements</sup> enter into agreements with the Government of Canada in respect of the payment to the Province of Ontario of a share of the principal and other cost of loans made under section 2 and matters related to such loans on such terms and conditions as may be agreed upon. R.S.O. 1970, c. 175, s. 3.

**4.** The moneys required for the purposes of section 2 shall <sup>Funds</sup> be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 175, s. 4.



## CHAPTER 169

## Flag Act

**W**HEREAS it is deemed expedient to adopt a flag of <sup>Preamble</sup> historical significance as the provincial flag of the Province of Ontario;

AND WHEREAS it is desirable that such flag have the design and colouring of the Canadian Red Ensign except that the badge in the fly be the shield of the armorial bearings of the Province of Ontario granted by Royal Warrant in 1868;

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

**1.** The flag described and illustrated in the Schedule to <sup>Provincial</sup> this Act is hereby adopted as the provincial flag of the <sup>flag</sup> adopted Province of Ontario. R.S.O. 1970, c. 176, s. 1.

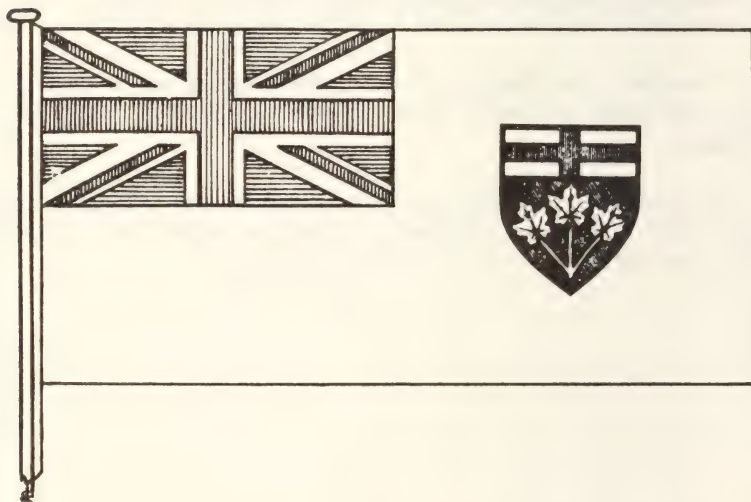
## SCHEDULE

## 1. Description:

A flag of the shade of red specified in the next following paragraph and of the proportions two by length and one by width with the Union Jack occupying the upper quarter next the staff and with the shield of the armorial bearings of the Province of Ontario centred in the half farthest from the staff.

British Admiralty Colour Code No. T1144 for nylon worsted bunting and No. T818A for other bunting.

## 2. Illustration:



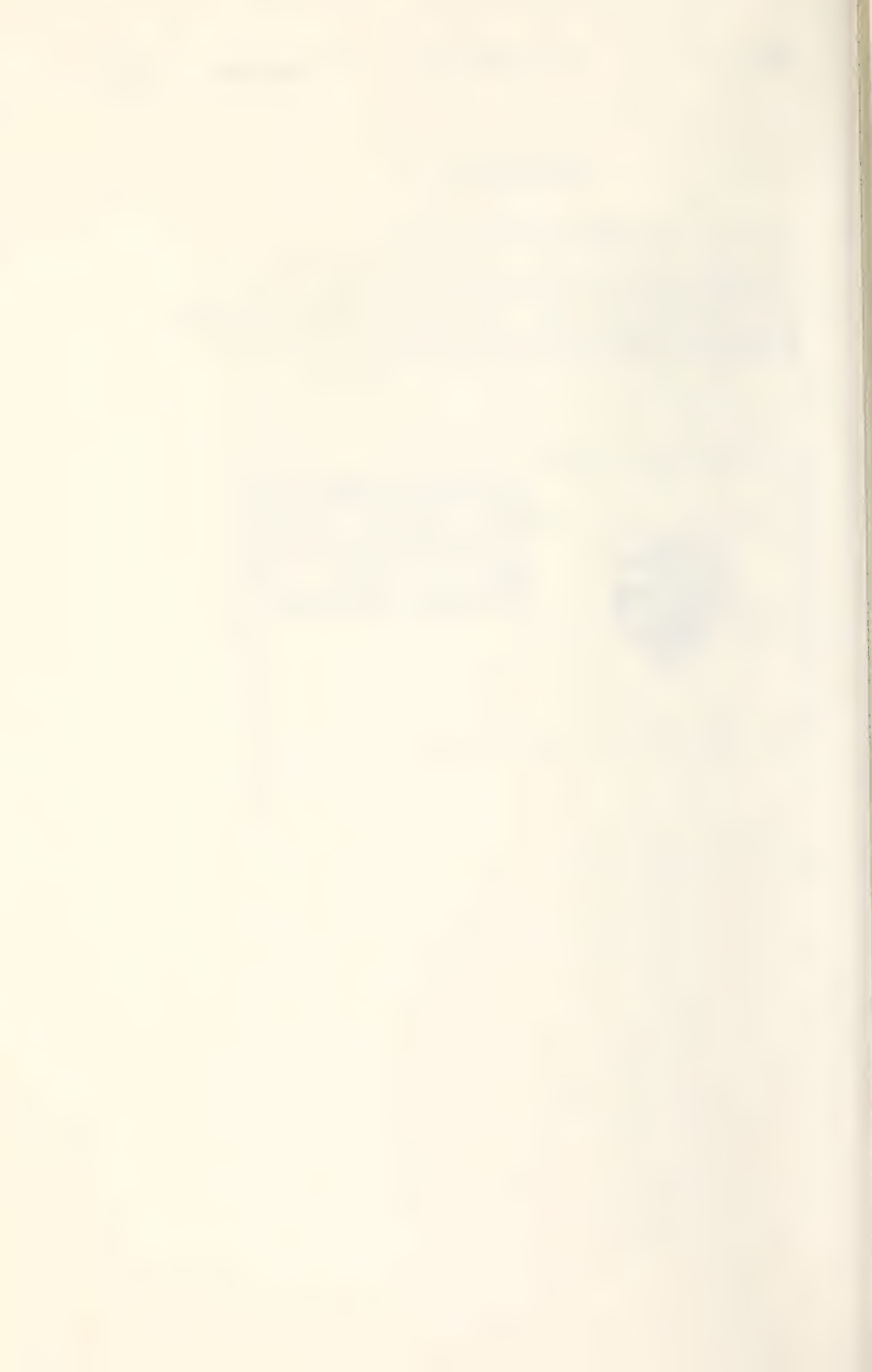
R.S.O. 1970, c. 176, Sched.

## CHAPTER 170

## Floral Emblem Act

1. The flower known botanically as the *trillium grandiflorum* and popularly known as the white trillium is adopted<sup>Floral emblem of Ontario</sup> as and shall be deemed to be the floral emblem of the Province of Ontario. R.S.O. 1970, c. 177, s. 1.

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## CHAPTER 171

## Fluoridation Act

## 1. In this Act,

Interpre-  
tation

(a) "Chief Election Officer" means the Chief Election Officer appointed under the *Election Act*;

R.S.O. 1980,  
c. 133

(b) "electors" means electors as defined in the *Municipal Act*;

R.S.O. 1980,  
c. 302

(c) "fluoridation system" means a system comprising equipment and materials for the addition of a chemical compound to release fluoride ions into a public water supply. R.S.O. 1970, c. 178, s. 1, *revised*.

2.—(1) Where a local municipality or a local board thereof owns or operates a waterworks system, the council of the municipality may by by-law establish, maintain and operate, or require the local board to establish, maintain and operate, a fluoridation system in connection with the waterworks system.

Establish-  
ment of  
system

(2) The council may, before passing a by-law under subsection (1), submit the following question to the electors of the municipality:

Vote as to  
establish-  
ment of  
system

Are you in favour of the fluoridation of the public water supply of this municipality?

and, where the question receives the affirmative vote of a majority of the electors who vote on the question, the council shall pass the by-law, or, where the question does not receive the affirmative vote of a majority of the electors who vote on the question, the council shall not pass the by-law until the question has again been submitted to the electors of the municipality and it has received the affirmative vote of a majority of the electors who vote on it. R.S.O. 1970, c. 178, s. 2.

3.—(1) Where a local municipality or a local board thereof has a fluoridation system in connection with its waterworks system, the council of the municipality may by by-law discontinue, or require the local board to discontinue, the fluoridation system.

Discon-  
tinuance of  
system

Vote as to  
discon-  
tinuance of  
system

(2) The council may before passing a by-law under subsection (1) submit the following question to the electors of the municipality:

Are you in favour of the discontinuance of the fluoridation of the public water supply of this municipality?

and, where the question receives the affirmative vote of a majority of the electors who vote on the question, the council shall pass the by-law, or, where the question does not receive the affirmative vote of a majority of the electors who vote on the question, the council shall not pass the by-law until the question has again been submitted to the electors of the municipality and it has received the affirmative vote of a majority of the electors who vote on it. R.S.O. 1970, c. 178, s. 3.

When  
question  
may be  
submitted

4.—(1) The council may submit a question under this Act to the electors at any time.

Petition

(2) Upon the presentation of a petition requesting that a question under this Act be submitted to the electors, signed by at least 10 per cent of the electors in the municipality, the council shall before or at the next municipal election submit the question to the electors, but, if a petition is presented in the month of November or December in any year, it shall be deemed to be presented in the month of February next following.

Idem

(3) A petition mentioned in subsection (2) shall be deemed to be presented when it is lodged with the clerk of the municipality, and the sufficiency of the petition shall be determined by him and his certificate as to its sufficiency is conclusive for all purposes. R.S.O. 1970, c. 178, s. 4.

Joint water-  
works, esta-  
blishment  
of system

5.—(1) Where a waterworks system is operated by or for two or more local municipalities, the body operating the waterworks system shall establish, maintain and operate a fluoridation system in connection therewith,

- (a) where there are two such municipalities, only after the councils of both such municipalities have passed a by-law requiring the fluoridation of the water supply of their respective municipalities; or
- (b) where there are more than two such municipalities, only after the councils of a majority of such municipalities have passed a by-law requiring the fluoridation of the water supply of their respective municipalities.

(2) A fluoridation system established under subsection (1) shall be discontinued where the councils of both municipalities or of a majority of the municipalities, as the case may be, have passed by-laws requiring the discontinuance of the fluoridation system in their respective municipalities. Idem, discontinuance

(3) Where petitions signed by at least 10 per cent of the electors in each such municipality, where there are two such municipalities, or in each of a majority of such municipalities, where there are more than two, are presented to the Chief Election Officer requesting that a question under this Act be submitted in both or all of such municipalities, as the case may be, each of the municipalities by or for which the waterworks system is operated shall submit the question to its electors on a date to be fixed by the Chief Election Officer, and the clerk of each such municipality shall certify the result of the vote in his municipality to the Chief Election Officer. Vote on question upon petition

(4) If a majority of the votes cast in both or all of such municipalities, as the case may be, on the question set out in section 2 is in the affirmative, each such municipality shall pass a by-law under subsection (1), or, if a majority of the votes cast in both or all of such municipalities, as the case may be, is in the negative, no by-law under subsection (1) shall be passed until the question has again been submitted to and has received the affirmative vote of a majority of the electors who vote on it. Result of vote, establishment

(5) If a majority of the votes cast in both or all of such municipalities, as the case may be, on the question set out in section 3 is in the affirmative, the council of each such municipality shall pass a by-law requiring the discontinuance of the fluoridation system in its municipality. R.S.O. 1970, c. 178, s. 5. Idem, discontinuance

**6.—**(1) The council of any local municipality that obtains its water supply under an agreement with a company public utility may pass a by-law requiring the fluoridation of the water supply, and thereupon the company shall establish, maintain and operate a fluoridation system in connection with the water supply of the municipality on such terms and conditions as the council of the municipality and the company agree upon or, failing agreement, as are determined by arbitration under the *Arbitrations Act*. Company public utilities

R.S.O. 1980,  
c. 25

(2) Any fluoridation system established under subsection (1) shall be discontinued where the council of the municipality has passed a by-law requiring its discontinuance, and the terms and conditions of the discontinuance may be agreed upon by the council of the municipality and the company or, Idem, discontinuance

failing agreement, may be determined by arbitration under the *Arbitrations Act*. R.S.O. 1970, c. 178, s. 6.

R.S.O. 1980,  
c. 25

Metropolitan  
Toronto

7.—(1) In this section, the expressions “area municipality” and “Metropolitan Corporation” have the same meanings as in the *Municipality of Metropolitan Toronto Act*.

R.S.O. 1980,  
c. 314

Establish-  
ment and  
discon-  
tinuance of  
system

(2) The council of the Metropolitan Corporation may by by-law establish, maintain and operate or discontinue a fluoridation system in connection with the Metropolitan waterworks system.

Vote on  
question

(3) The council of the Metropolitan Corporation may fix a day for the submission of a question under this Act to the electors, in which event the area municipalities shall submit the question to their respective electors accordingly, and the clerk of each area municipality shall forthwith certify the result of the vote in his area municipality to the clerk of the Metropolitan Corporation.

Idem, upon  
petition

(4) Where petitions signed by at least 10 per cent of the electors in each of a majority of the area municipalities, certified by the clerks of the respective area municipalities, are presented to the Metropolitan Corporation requesting that a question under this Act be submitted under subsection (3), the council of the Metropolitan Corporation shall fix a day for the submission of the question under subsection (3).

Establish-  
ment after  
vote

(5) If a majority of the votes cast in all of the area municipalities on the question set out in section 2 is in the affirmative, the Metropolitan Corporation shall pass a by-law under subsection (2), or, if a majority of the votes cast in all of the area municipalities is in the negative, a by-law under subsection (2) shall not be passed until the question has again been submitted and has received the affirmative vote of a majority of the electors who vote on it.

Discon-  
tinuance  
after vote

(6) If a majority of the votes cast in all of the area municipalities on the question set out in section 3 is in the affirmative, the council of the Metropolitan Corporation shall pass a by-law discontinuing the fluoridation system in connection with the Metropolitan waterworks system. R.S.O. 1970, c. 178, s. 7.

Systems  
existing  
on March  
29, 1961  
R.S.O. 1960,  
c. 321

8. Every fluoridation system that was being operated under the authority of *The Public Health Act* on the 29th day of March, 1961, shall be deemed to have been established and to be maintained and operated under the authority of this Act. R.S.O. 1970, c. 178, s. 8.

**9.**—(1) The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations,

- (a) governing and regulating the equipment and processes that may be used in fluoridation systems;
- (b) prescribing the nature and amount of the chemical compounds that may be used in fluoridation systems;
- (c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Any such regulation may be general or particular in its <sup>Idem</sup> application. R.S.O. 1970, c. 178, s. 9.



## CHAPTER 172

Foreign Cultural Objects Immunity  
from Seizure Act

1.—(1) When any work of art or other object of cultural significance from a foreign country is brought into Ontario pursuant to an agreement between the foreign owner or custodian thereof and the Government of Ontario or any cultural or educational institution in Ontario providing for the temporary exhibition or display thereof in Ontario administered, operated or sponsored, without profit, by the Government of Ontario or any such cultural or educational institution, no proceeding shall be taken in any court and no judgment, decree or order shall be enforced in Ontario for the purpose or having the effect of depriving the Government of Ontario or such institution, or any carrier engaged in transporting such work or object within Ontario, of custody or control of such work or object if, before such work or object is brought into Ontario, the Lieutenant Governor in Council determines by order in council that such work or object is of cultural significance and that the temporary exhibition or display thereof in Ontario is in the interest of the people of Ontario and such order in council has been published in *The Ontario Gazette*.

Immunity  
of certain  
foreign  
cultural  
objects  
from  
seizure  
while in  
Ontario

(2) Subsection (1) does not preclude any judicial action for or in aid of the enforcement of the terms of any such agreement or the enforcement of the obligation of any carrier under any contract for the transportation of any such work or object or the fulfilment of any obligation assumed by the Government of Ontario or such institution pursuant to any such agreement. 1978, c. 75, s. 1.

Subs. (1)  
not to  
preclude  
enforcement  
of agree-  
ments, etc.



## CHAPTER 173

## Forest Fires Prevention Act

## INTERPRETATION

**1. In this Act,**Interpre-  
tation

- (a) "Minister" means the Minister of Natural Resources;
- (b) "Ministry" means the Ministry of Natural Resources;
- (c) "municipality" means a city, town, village, township or improvement district;
- (d) "officer" includes a fire warden appointed under section 8 and a special officer appointed under section 9 exercising the powers of his appointment;
- (e) "owner" includes a locatee, purchaser from the Crown, assignee, lessee, occupant, purchaser, timber licensee, holder of a mining claim or location, and any person having the right to cut timber or wood upon any land;
- (f) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 179, s. 1; 1974, c. 22, s. 1.

## ADMINISTRATION

**2.** The administration of this Act is under the control and direction of the Minister. R.S.O. 1970, c. 179, s. 2.

Administra-  
tion

**3.—(1)** This Act applies only to fire regions. R.S.O. 1970, c. 179, s. 3 (1); 1974, c. 22, s. 2.

Application  
of Act

(2) Nothing in this Act affects or shall be held to limit or interfere with the right of any person to bring and maintain a civil action for damages occasioned by fire. R.S.O. 1970, c. 179, s. 3 (2).

Right of  
action for  
damages  
not affected

**4.** The Minister may appoint officers for carrying out this Act and the regulations. R.S.O. 1970, c. 179, s. 4.

Appointment  
of officers

Right of  
officer to  
enter on  
premises

**5.**—(1) Subject to subsection (2), an officer may, for the purposes of this Act, enter into and upon any lands and premises. R.S.O. 1970, c. 179, s. 5 (1).

Entry to  
dwellings

(2) An officer shall not enter any place actually used as a dwelling without the consent of the occupant except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*. R.S.O. 1970, c. 179, s. 5 (2); 1973, c. 14, s. 1.

Information  
to be given  
to officer by  
tourists, etc.

**6.** Every person in a forest or woodland shall, upon request, give an officer information as to his name, address, routes to be followed, location of camps and any other information pertaining to the protection of the forest or woodland from fire. R.S.O. 1970, c. 179, s. 6.

Right to  
summon  
assistance

**7.** For the purpose of controlling and extinguishing a fire, an officer may use any privately-owned equipment and may employ or summon the assistance of any male person between the ages of eighteen and sixty years, except persons providing essential services and persons physically unfit, and on private lands may take such action as he considers advisable to control and extinguish a fire. R.S.O. 1970, c. 179, s. 7.

Appointment  
of fire  
wardens

**8.** The Minister may appoint fire wardens who shall have authority to enforce such of the provisions of this Act and the regulations as are provided in the appointment in the areas specified in the appointment. R.S.O. 1970, c. 179, s. 8.

Special  
officers

**9.**—(1) Where the Minister considers it advisable in the interest of forest protection, he may appoint special officers who shall have authority to enforce this Act and the regulations on the land mentioned in the appointment. R.S.O. 1970, c. 179, s. 9 (1).

Salaries

(2) The owner of the land mentioned in an appointment made under subsection (1) shall reimburse the Ministry for the salaries and expenses of the special officers. R.S.O. 1970, c. 179, s. 9 (2); 1974, c. 22, s. 3.

#### FIRE SEASON

Fire season

**10.** The period from the 1st day of April to the 31st day of October in each year shall be a fire season. R.S.O. 1970, c. 179, s. 10.

## FIRE PERMITS

**11.**—(1) Except under the authority of a fire permit, no person shall start a fire outdoors during a fire season for any purpose other than cooking or obtaining warmth. R.S.O. 1970, c. 179, s. 11 (1). Prohibition  
against  
fire except  
under fire  
permit

(2) Except under the authority of a fire permit, no person shall ignite fireworks during a fire season in or within 300 metres of a forest or woodland. R.S.O. 1970, c. 179, s. 11 (2); 1978, c. 87, s. 25 (1). Prohibition  
against  
fireworks  
except  
under fire  
permit

(3) Upon application therefor an officer may issue a fire permit. Issue of  
fire permit

(4) A fire permit may be limited as to duration and area, but in any event it expires with the fire season and may contain such terms and conditions as the issuing officer considers necessary. Limitations  
in permit

(5) A fire permit may be cancelled or suspended at any time by an officer, and immediately upon receiving notice of such cancellation or suspension, the permittee shall extinguish any fire started under the permit. R.S.O. 1970, c. 179, s. 11 (3-5). Cancellat-  
ion or  
suspension  
of permit

## RESTRICTED ZONES

**12.** No person shall start a fire outdoors in a restricted fire zone for the purpose of cooking or obtaining warmth except in a portable stove or charcoal installation. R.S.O. 1970, c. 179, s. 12. Camp fires

**13.**—(1) Except under the authority of a forest travel permit, no person shall enter and travel about in a restricted travel zone except, Travel  
permits

(a) on public roads, not including unopened road allowances, and all lands vested in Her Majesty the Queen as represented by the Minister of Transportation and Communications;

(b) in cities, towns, villages and police villages;

(c) in supervised camp grounds; and

(d) on waters that are immediately adjacent to any of the parts referred to in clause (a), (b) or (c). R.S.O. 1970, c. 179, s. 13 (1); 1974, c. 22, s. 4.

(2) Upon application therefor an officer may issue a forest travel permit. Issue

Limitations  
in permits

(3) A forest travel permit may be limited as to duration and area, but in any event it expires with the fire season and may contain such terms and conditions as the issuing officer considers necessary.

Cancellat-  
ion or  
suspension

(4) A forest travel permit may be cancelled or suspended at any time by an officer. R.S.O. 1970, c. 179, s. 13 (2-4).

Notice of  
regulations

**14.**—(1) The Minister shall provide for such notice as he considers necessary under the circumstances of any regulation made under clause 37 (b) in such newspapers and other media as in his opinion will give the greatest publicity.

Burden  
of proof

R.S.O. 1980,  
c. 446

(2) In any prosecution under section 12 or subsection 13 (1) in respect of an offence alleged to have been committed prior to publication of the regulation under the *Regulations Act*, the onus is on the person charged to prove he did not have actual notice of the regulation at the time the offence is alleged to have been committed. R.S.O. 1970, c. 179, s. 14.

## WORK PERMITS

Work  
permits

**15.**—(1) Except under the authority of a work permit, no person shall, in or within 300 metres of a forest or woodland,

- (a) carry on any logging, mining or industrial operation;
- (b) clear land;
- (c) construct a dam, bridge or camp;
- (d) operate a mill for the purpose of manufacturing timber; or
- (e) carry on any operation liable to cause the accumulation of slash or debris. R.S.O. 1970, c. 179, s. 15 (1); 1978, c. 87, s. 25 (2).

## Conditions

(2) A work permit may be limited as to duration and area, but in any event it expires with the 31st day of March next following the date of issue and may contain such terms and conditions as the issuing officer considers necessary.

## Cancellation

(3) An officer may in the interest of forest protection cancel or suspend a work permit at any time.

Per diem  
penalty

(4) Where an officer finds an operation mentioned in subsection (1) being conducted without a work permit, he may

order that the operation shall cease until a work permit has been obtained and any person carrying on an operation after such order has been made is, in addition to any penalty imposed, subject to a fine of \$100 for each day such operation is continued without a work permit.

(5) Where a person carries on an operation mentioned in subsection (1) through a servant, contractor, subcontractor or someone on his behalf, he shall obtain any permit required under this Act and he shall be deemed to have committed any offence against this Act or the regulations committed by his servant, contractor, subcontractor or person acting on his behalf in carrying out the operation. R.S.O. 1970, c. 179, s. 15 (2-5). Person to obtain work permit

#### PREVENTION MEASURES

**16.**—(1) Every person clearing land shall, subject to the provisions of this Act respecting fire permits, pile and burn all brush, debris, non-merchantable timber and other flammable material cut or accumulated thereon. Disposal of refuse on land being cleared

(2) Subsection (1) does not apply to material that has been ground, chipped or shredded in an installation approved in the work permit authorizing the clearing of the land. R.S.O. 1970, c. 179, s. 16. Exception

**17.** Every person having charge of a camp, a mine, a mill for the purpose of manufacturing timber or a garbage dump that is located in or within 300 metres of a forest or woodland shall have the area surrounding the camp, mine, mill or dump cleared of flammable debris for a distance of at least thirty metres and such further distance as may be ordered by an officer. R.S.O. 1970, c. 179, s. 17; 1978, c. 87, s. 25 (3). Clearing in neighbourhood of mills, etc.

**18.**—(1) Where an officer finds on any land, building, structure or equipment a condition that, in his opinion, may cause danger to life or property from fire, the officer may order the owner or person in control thereof or the person who has caused the condition to take such action as the officer considers necessary to remedy the condition, and in default the officer, with such assistants as he requires, may remedy the condition. Power of officer as to fire dangers

(2) The cost and expenses of any action taken by an officer and his assistants under subsection (1) shall be paid by the owner or person in control of the land or the person who has caused the condition and are recoverable by the Crown in right of Ontario in any court of competent jurisdiction. R.S.O. 1970, c. 179, s. 18. Cost

Agreements  
for fire  
prevention  
and control

**19.** The Minister and the Crown in right of Canada or any province of Canada, any agency of any of them or any municipality may enter into an agreement with respect to the prevention and control of grass, brush or forest fires. 1973, c. 14, s. 2.

#### EXTINGUISHMENT OF FIRES

Extinguish-  
ment of  
fires

**20.** An officer may at any time in the interest of forest protection extinguish a fire or order any person in charge or apparently in charge of a fire to extinguish the fire. R.S.O. 1970, c. 179, s. 20.

Duty of  
municipality

**21.**—(1) Subject to an agreement made under section 19 and to subsection (2), every municipality in a fire region shall at its expense extinguish grass, brush or forest fires within its limits, but where the action taken by it in extinguishing any such fire is in the opinion of an officer not adequate, the officer may take such action as he considers necessary to control and extinguish the fire, and the cost and expenses incurred by the Ministry in controlling and extinguishing the fire are a debt due to the Crown in right of Ontario and shall be paid by the municipality to the Treasurer of Ontario. R.S.O. 1970, c. 179, s. 21 (1); 1974, c. 22, s. 5 (1).

Contribution  
by  
Ministry

(2) Upon satisfactory proof being furnished by the municipality that a fire has started on Crown land, the cost and expenses of controlling and extinguishing the fire shall be borne by the Ministry. R.S.O. 1970, c. 179, s. 21 (2); 1974, c. 22, s. 5 (2).

Reporting  
of fires

**22.** Every person who has started a fire outdoors, or is in charge of a fire outdoors, that is not kept under control shall report the fire without undue delay to an officer and in any prosecution or action the onus is upon him to prove that he so reported the fire. R.S.O. 1970, c. 179, s. 22.

Evacuation,  
etc.

**23.**—(1) Where in the opinion of the Minister a forest fire emergency exists, he may by order declare an area to be a forest fire emergency area and may make such orders and take such action as he considers necessary for effectual fire suppression or the safety of or evacuation of persons in the area.

Order not a  
Regulation  
R.S.O. 1980,  
c. 446

(2) An order made under subsection (1) is not a regulation within the meaning of the *Regulations Act*. R.S.O. 1970, c. 179, s. 23.

Appeal

**24.**—(1) Any person who is refused a fire permit, a forest travel permit or a work permit by an officer, or who is aggrieved by the terms and conditions contained in such

permit or whose fire permit, forest travel permit or work permit has been cancelled or suspended by an officer may appeal to the district manager of the administrative district to which the permit relates from the decision of the officer, and the district manager shall hear the appeal and may affirm or vary the terms and conditions or the decision of the officer and may, if he rescinds the decision, grant a permit. 1971, c. 50, s. 41, *part*; 1974, c. 22, s. 6 (1).

(2) The appellant and the officer from whose decision the appeal is taken are parties to an appeal under this section. 1971, c. 50, s. 41, *part*. Parties

(3) An appeal under this section may be made in writing or orally or by telephone to the district manager, but the district manager may require the grounds for the appeal to be made in writing before the hearing. 1971, c. 50, s. 41, *part*; 1974, c. 22, s. 6 (2). How appeal made

(4) Notwithstanding that an appeal has been brought, the decision of an officer relating to a permit, unless varied by the officer, is binding and effective until varied or rescinded by the district manager. 1971, c. 50, s. 41, *part*; 1974, c. 22, s. 6 (3). Decision of officer

#### OFFENCES

**25.** No person shall hinder, obstruct or impede an officer in the performance of his duties. R.S.O. 1970, c. 179, s. 24. Obstruction of officers

**26.** No person shall refuse or neglect to provide any privately-owned equipment or to render assistance when required under section 7. R.S.O. 1970, c. 179, s. 25. Rendering assistance

**27.** No person shall within 800 metres of a village, town or city accumulate flammable debris or permit any such accumulation to remain on any property owned by him or under his control. R.S.O. 1970, c. 179, s. 26; 1978, c. 87, s. 25 (4). Accumulation of flammable refuse

**28.** No person shall smoke while walking or working in a forest or woodland during the fire season. R.S.O. 1970, c. 179, s. 27. Smoking prohibited

**29.** No person shall throw or drop, in or within 300 metres of a forest or woodland, Smoking material, etc.

(a) a lighted match, cigarette, cigar or other smoking material;

(b) live coals; or

(c) hot ashes. R.S.O. 1970, c. 179, s. 28; 1978, c. 87, s. 25 (5).

Discharge  
of fire-arms

**30.** No person who discharges a fire-arm or flare in or within 300 metres of a forest or woodland shall leave any residue from the discharge unextinguished. R.S.O. 1970, c. 179, s. 29; 1978, c. 87, s. 25 (6).

Destruction  
of notices  
or signs

**31.** No person shall, without lawful authority, tear down, remove, damage, deface or interfere with any notice or sign put up, posted or placed by the Ministry for the purposes of fire prevention. R.S.O. 1970, c. 179, s. 30; 1974, c. 22, s. 7.

Destruction  
of equip-  
ment, etc.

**32.** No person shall, without lawful authority, tear down, remove, damage, deface or interfere with any equipment, building or structure placed in a forest or woodland for the purpose of protecting the forest. R.S.O. 1970, c. 179, s. 31.

Spark  
arresters

**33.** No person shall use or operate in or within 300 metres of a forest or woodland any burner, chimney, engine, incinerator or other spark-emitting outlet that is not provided with an adequate device for arresting sparks. R.S.O. 1970, c. 179, s. 32; 1978, c. 87, s. 25 (7).

Railways

**34.** The provisions of any order, rule or direction of the Canadian Transport Commission and of the railway transport committee established by that commission respecting the prevention and control of fires apply with necessary modifications to any railway that is subject to the legislative jurisdiction of the Province of Ontario. R.S.O. 1970, c. 179, s. 33.

#### PENALTIES

Offences

**35.—(1)** Every person who disobeys or refuses or neglects to carry out any of the provisions of this Act or the regulations or of any order made thereunder or any condition of any permit issued thereunder is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or to both, and such person is also liable to the Crown in right of Ontario for any cost and expenses incurred by the Ministry in endeavouring to control or extinguish any fire caused by or resulting from such disobedience, refusal or neglect. R.S.O. 1970, c. 179, s. 34 (1); 1974, c. 22, s. 8.

Recovery  
of expenses

**(2)** The cost and expenses for which a person is liable under subsection (1) are recoverable with costs in any court of competent jurisdiction as a debt due, but where the amount claimed does not exceed \$1,000 and proceedings are taken under the *Provincial*

R.S.O. 1980,  
c. 400

*Offences Act* in respect of the disobedience, refusal or neglect, the court, upon making a conviction, may order payment of such amount to the Treasurer of Ontario and every such order may be enforced in the same manner as a small claims court judgment.

(3) In any prosecution under a section of this Act that requires a permit, the onus is on the person charged to prove that he had a permit at the time the offence is alleged to have been committed. R.S.O. 1970, c. 179, s. 34 (2, 3). <sup>Onus of proof</sup>

#### REGULATIONS

**36.** The Lieutenant Governor in Council may make regulations, <sup>Regulations by Lt. Gov. in Council</sup>

- (a) declaring parts of Ontario to be fire regions and declaring the name that each fire region shall bear;
- (b) governing the issue, form, refusal and cancellation of permits or any class of them and prescribing their terms and conditions;
- (c) designating classes of operations and activities and governing the equipment, staff and precautions to be provided or observed in respect of fire prevention or suppression by persons engaged in any class of operation or activity;
- (d) governing the use of portable stoves and charcoal installations in a restricted fire zone;
- (e) prescribing forms and providing for their use;
- (f) respecting any matter necessary or advisable to carry out effectively forest fire prevention and the intent and purpose of this Act. R.S.O. 1970, c. 179, s. 35; 1974, c. 22, s. 9.

**37.** The Minister may make regulations,

<sup>Regulations by Minister</sup>

- (a) declaring any period between the 1st day of January and the 31st day of March, both inclusive, or between the 1st day of November and the 31st day of December, both inclusive, in any year to be a fire season in a fire region or any part of a fire region;
- (b) declaring any fire region or part of a fire region to be a restricted fire zone or restricted travel zone for any period;

- (c) fixing the rates of pay for persons employed or summoned under section 7. R.S.O. 1970, c. 179, s. 36; 1974, c. 22, s. 10.

## CHAPTER 174

## Forest Tree Pest Control Act

## 1. In this Act,

Interpre-  
tation

- (a) "control measures" includes measures to prevent, retard, suppress, eradicate or destroy;
- (b) "forest tree pest" means any vertebrate or invertebrate animal or any virus, fungus, or bacterium or other organism that is injurious to trees commonly found growing in a forest or windbreak or the products from such trees and that is designated as a forest tree pest in the regulations;
- (c) "infestation" means an actual or potential infestation or infection by a forest tree pest;
- (d) "Minister" means the Minister of Natural Resources;
- (e) "officer" means a person appointed by the Minister for the purposes of this Act;
- (f) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 180, s. 1; 1972, c. 4, s. 12.

2. The Minister may appoint officers for the purpose of <sup>Appointment of officers</sup> carrying out this Act. R.S.O. 1970, c. 180, s. 2.

3. An officer, with or without the consent of the owner, <sup>Powers of officer</sup> may enter upon any land between sunrise and sunset and make an inspection of the land and the trees and forest products thereon to detect and appraise an infestation. R.S.O. 1970, c. 180, s. 3.

4. Where in the opinion of the Minister the control of an <sup>Control measures</sup> infestation on any land is in the public interest, the Minister may direct an officer to enter upon the land and, at the expense of the Crown, take such control measures as he considers advisable in the circumstances. R.S.O. 1970, c. 180, s. 4.

5.—(1) No person shall hinder, obstruct or impede an <sup>Obstruction of officers</sup> officer in the performance of his duty.

## Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1970, c. 180, s. 5.

## Regulations

**6.**—(1) The Lieutenant Governor in Council may make regulations designating forest tree pests for the purposes of this Act.

Regulation  
may be  
limited

(2) Any regulation made under subsection (1) may be limited territorially or as to time or otherwise. R.S.O. 1970, c. 180, s. 6.

## CHAPTER 175

## Forestry Act

## 1. In this Act,

Interpre-  
tation

- (a) "forestry purposes" includes the production of wood and wood products, provision of proper environmental conditions for wild life, protection against floods and erosion, recreation, and protection and production of water supplies;
- (b) "Minister" means the Minister of Natural Resources;
- (c) "Ministry" means the Ministry of Natural Resources;
- (d) "municipality" includes a district municipality and a regional municipality;
- (e) "nursery stock" means coniferous or hardwood seedlings, transplants, grafts or trees propagated or grown in a nursery and having the roots attached, and includes cuttings having or not having the roots attached;
- (f) "owner" means a person having any right, title, interest or equity in land;
- (g) "private forest reserve" means land declared to be a private forest reserve under this Act;
- (h) "regulations" means the regulations made under this Act. R.S.O. 1970, c.181, s. 1; 1975, c. 20, s. 1.

2.—(1) The Minister may enter into agreement with the owners of lands that are suitable for forestry purposes for the management of such lands upon such terms and conditions as he considers proper, but no such agreement shall be entered into for a term of less than twenty years. R.S.O. 1970, c. 181, s. 2 (1).

Agreements  
as to  
forestry  
development

(2) Every agreement heretofore or hereafter entered into under subsection (1) may provide for entry into supplementary agreements and, notwithstanding subsection (1), any supplementary agreement heretofore or hereafter entered into may be for a term not exceeding the unexpired term of the agreement being supplemented. 1971, c. 17, s. 1.

Supple-  
mentary  
agreements

## Grants

(3) The Minister may make grants out of the moneys appropriated therefor by the Legislature to any conservation authority or to any municipality for the purpose of assisting it in the acquisition of lands that are suitable for forestry purposes and that are to be managed under an agreement entered into under subsection (1) of such sums as are provided for in the agreement.

Forestry  
purposes  
only

(4) A conservation authority or municipality that has entered into an agreement under subsection (1) shall not, without the approval of the Lieutenant Governor in Council, use any lands in respect of which grants have been made under subsection (3) for any purpose that is inconsistent with forestry purposes at any time during the life of the agreement or at any time thereafter, and the conservation authority or municipality, as the case may be, unless the order of approval of the Lieutenant Governor in Council otherwise provides, shall repay to the Province of Ontario all grants to it under the agreement in respect of the lands that are used for a purpose that is inconsistent with forestry purposes.

Sale of  
lands

(5) Lands in respect of which grants have been made under subsection (3) shall not, without the approval of the Lieutenant Governor in Council, be sold, leased or otherwise disposed of during the life of the agreement or at any time thereafter, and the proceeds from any sale, lease or other disposition of any such lands shall be shared equally by the conservation authority or municipality, as the case may be, and the Province of Ontario.

## Exception

(6) Subsection (5) does not apply to a sale, lease or other disposition for the uses of the Province of Ontario. R.S.O. 1970, c. 181, s. 2 (2-5).

Registration  
of agree-  
ments

**3.** The Minister may direct that an agreement entered into under section 2 shall be registered by the owner of the land in respect of which the agreement is made in the proper land registry office, and thereupon such agreement is binding upon and inures to the benefit of every successor-in-title to such owner during the term of the agreement. R.S.O. 1970, c. 181, s. 3.

Establish-  
ment of  
programs

**4.—(1)** The Minister, subject to the approval of the Lieutenant Governor in Council, may establish programs for the encouragement of forestry.

Conditions  
to services  
or grants

(2) A program may determine the conditions under which services are provided by the Ministry and expenses are allowed or grants are payable.

(3) A program may require that fees be paid by persons engaged in forestry to which the program applies and may fix the amounts thereof. <sup>Fees</sup>

(4) The moneys required for the purposes of a program shall be paid out of the moneys appropriated therefor by the Legislature. 1975, c. 20, s. 2. <sup>Moneys</sup>

5. The Minister or any person appointed by him for the purpose may, without the consent of the owner, enter upon any land and make an inspection thereof and survey and examine the timber and other natural resources thereon in order to determine the suitability of the land for forestry purposes. R.S.O. 1970, c. 181, s. 4. <sup>Right of entry and inspection</sup>

6.—(1) The Lieutenant Governor in Council may, with the consent of the owner of any land covered with forest or suitable for reforestation, declare the land to be a private forest reserve. <sup>Declaring forest land private forest reserve</sup>

(2) The declaration shall be registered forthwith by the owner in the proper land registry office and thereupon the land constitutes in perpetuity a private forest reserve. R.S.O. 1970, c. 181, s. 5 (1, 2). <sup>Registration of declaration</sup>

(3) The owner of a private forest reserve shall not cut or remove any trees growing thereon without the consent of the Minister who, in giving or refusing his consent, shall have regard to the sound management of the reserve for forestry purposes and the reasonable business requirements of the owner and who, where he refuses his consent, shall give reasons to the owner for his refusal. 1971, c. 50, s. 42 (1). <sup>Cutting and removing trees</sup>

7.—(1) Where the letters patent granting any land declared to be a private forest reserve under this Act contain a reservation of any class or kind of timber, the Minister, upon application and payment by the owner of a purchase price determined by the Minister, may make an order releasing the land from such reservation. <sup>Release of reserved timber rights</sup>

(2) Where lands are released from a reservation of any class or kind of timber under subsection (1), the cutting or removal of such timber is subject to subsection 6 (3). R.S.O. 1970, c. 181, s. 6. <sup>Effect of release</sup>

8.—(1) The Lieutenant Governor in Council may authorize the Minister to establish one or more nurseries for the growing and production of nursery stock. <sup>Establishment of nurseries</sup>

Furnishing  
of nursery  
stock

(2) The Minister, upon application therefor, may furnish nursery stock to any owner upon such terms and conditions as the regulations prescribe.

Idem

(3) The Minister may authorize the furnishing of nursery stock to any public authority or any association, board, institute, society or other organization for educational or scientific purposes upon such terms and conditions as he considers proper.

Sale, etc.,  
of nursery  
stock  
prohibited

(4) No person shall, directly or indirectly, sell or offer for sale or dispose of by gift or otherwise any nursery stock furnished under this Act.

False  
statement in  
application

(5) No person shall knowingly make any false statement of fact in an application to the Minister for nursery stock. R.S.O. 1970, c. 181, s. 7.

Offence

9. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$500. R.S.O. 1970, c. 181, s. 8.

Regulations

10. The Lieutenant Governor in Council may make regulations,

- (a) prohibiting or regulating and governing the running at large of live stock or other domestic animals in private forest reserves;
- (b) respecting the preservation of trees on private forest reserves;
- (c) governing the form of and the manner in which application for nursery stock shall be made and prescribing the manner and time of payment therefor where a charge is made;
- (d) prescribing the purposes for which nursery stock may or may not be furnished;
- (e) prescribing the classes of land in respect of which and the terms and conditions under which nursery stock may be furnished free of charge or with a charge;
- (f) fixing the charges to be made for nursery stock or any species or type thereof. R.S.O. 1970, c. 181, s. 9; 1971, c. 50, s. 42 (2).

## CHAPTER 176

## Fraudulent Conveyances Act

## 1. In this Act,

Interpre-  
tation

- (a) "conveyance" includes gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise;
- (b) "personal property" includes goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in a bank, company or corporation, and any interest therein;
- (c) "real property" includes lands, tenements, hereditaments and any estate or interest therein. R.S.O. 1970, c. 182, s. 1.

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns. R.S.O. 1970, c. 182, s. 2.

Where  
conveyances  
void as  
against  
creditors

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and *bona fide* to a person not having at the time of the conveyance to him notice or knowledge of the intent set forth in that section. R.S.O. 1970, c. 182, s. 3.

Where s. 2  
does not  
apply

4. Section 2 applies to every conveyance executed with the intent set forth in that section notwithstanding that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of *bona fides* and want of notice or knowledge on the part of the purchaser. R.S.O. 1970, c. 182, s. 4.

Where s. 2  
applies

5. Every conveyance of real property heretofore or hereafter made with intent to defraud and deceive the purchaser shall be deemed to be void only as against that person and his

When  
fraudulent  
conveyances  
declared  
void as  
against  
purchasers

assigns and all persons lawfully claiming under him or them who have purchased or hereafter purchase for money or other good consideration the same real property or a part thereof. R.S.O. 1970, c. 182, s. 5.

Where s. 5  
does not  
apply

6. Section 5 does not apply to and shall not be construed to impeach, defeat or make void a conveyance of real property made *bona fide* and for good consideration. R.S.O. 1970, c. 182, s. 6.

Convey-  
ances made  
revocable

7.—(1) If a person makes a conveyance of real property with a clause, provision, article, or condition of revocation, determination or alteration at his will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges such real property or a part thereof to a person for money or other good consideration paid or given, such first conveyance not being by him revoked, made void or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged is void against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them.

Saving as to  
mortgages

(2) No lawful mortgage made *bona fide*, and without fraud or covin, and upon good consideration shall be impeached or impaired by force of this Act, but it has the like force and effect as if this Act had not been passed. R.S.O. 1970, c. 182, s. 7.

Validity of  
voluntary  
conveyance,  
etc. exe-  
cuted in  
good faith  
and duly  
registered

8.—(1) Nothing in section 5, 6 or 7 extends to a conveyance that is executed in good faith and duly registered in the proper land registry office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to a subsequent purchaser from the same grantor of the same real property or a part thereof, nor is such a conveyance merely by reason of the absence of a valuable consideration void as against such purchaser or his heirs, executors, administrators or assigns or any person claiming by, from or under any of them.

Effect of  
subs. (1)

(2) Nothing in subsection (1) has the effect of making valid an instrument that is for any reason, other than or in addition to the absence of a valuable consideration, void under section 5, 6 or 7 or otherwise, nor has the effect of making valid an instrument as against a purchaser who had before the 28th day of February, 1868, entered into a binding contract for or received his conveyance upon such purchase. R.S.O. 1970, c. 182, s. 8.

## CHAPTER 177

## Fraudulent Debtors Arrest Act

## 1. In this Act,

Interpre-  
tation

- (a) "county" includes a provisional judicial district ;
- (b) "county court" includes a district court ;
- (c) "sheriff" includes any officer to whom an order for arrest is delivered for execution. R.S.O. 1970, c. 183, s. 1.

2.—(1) When a person by affidavit of himself or some other person shows to the satisfaction of a judge of the Supreme Court or of a county court that he has a cause of action against a person liable to arrest to the amount of not less than \$100, and also such facts and circumstances as satisfy the judge that there is a good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the applicant in particular, the judge may order that the person against whom the application is made be arrested and give security for such sum as the judge thinks fit.

When order  
for arrest of  
debtor may  
be made

(2) A judge of a county court may make an order for arrest in the Supreme Court as well as in his own court.

Powers of  
county court  
judge

(3) The order may be made as well before as after the action has been commenced.

Order before  
action

(4) Where the order is made before action, unless an action is commenced and notice thereof is given to the sheriff within two days after the date of the order or within such further time as the judge by the order allows, the order shall be superseded and the person against whom it was made is, if under arrest, entitled to be discharged out of custody. R.S.O. 1970, c. 183, s. 2.

When action  
to be  
brought

3. An order for arrest shall be in force for two months from its date and no longer, but on its expiration a new order may be obtained in the manner provided by this Act. R.S.O. 1970, c. 183, s. 3.

Term of  
validity

Effect of  
orders for  
payment

**4.**—(1) Every order of the Supreme Court or of a county court directing payment of money or of costs, charges or expenses, so far as it relates thereto, shall be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act.

Who to be  
deemed the  
plaintiff,  
etc.

(2) Where the judgment or order directs the payment of money into court or otherwise than to a person, the person having the carriage of the judgment or order, so far as relates to the payment, shall be deemed the person to receive payment or the plaintiff, as the case may be, within the meaning of this Act. R.S.O. 1970, c. 183, s. 4.

Limit of  
security in  
alimony

**5.** Where an order for arrest is made in an action for alimony, the amount for which security is to be given shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less, at the discretion of the judge. R.S.O. 1970, c. 183, s. 5.

Concurrent  
order for  
arrest

**6.** Concurrent or duplicate orders may be issued from time to time in like manner and form as the original order, and shall be in force for the same period as the original order and no longer. R.S.O. 1970, c. 183, s. 6.

Costs

**7.** Unless otherwise ordered, the costs of and incidental to an order for arrest are costs in the cause. R.S.O. 1970, c. 183, s. 7.

Order and  
copies to be  
delivered to  
sheriff

**8.** The order and as many copies thereof as there are persons intended to be arrested thereon shall be delivered to the sheriff, and the plaintiff or his solicitor may direct the sheriff to arrest one or more of the persons there named, which direction shall be obeyed by the sheriff. R.S.O. 1970, c. 183, s. 8.

Time within  
which  
arrests to  
be made

**9.** The sheriff shall, within two months from the date of the order, but not afterwards, execute it according to the exigency thereof, and shall upon or immediately after its execution cause one copy of it to be delivered to the person whom he is directed to arrest, and shall exhibit the original order to him. R.S.O. 1970, c. 183, s. 9.

Endorse-  
ment of date

**10.** The sheriff shall, within two days after the arrest, endorse on the order the true date of the arrest. R.S.O. 1970, c. 183, s. 10.

Privileged  
persons

**11.** No person is subject to arrest who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. R.S.O. 1970, c. 183, s. 11.

**12.** No person is liable to arrest for contempt for non-payment of any sum of money or of any costs, charges or expenses payable by a judgment or order of the Supreme Court or of a judge thereof, or of a county court or of a judge thereof, and no person is liable to arrest for non-payment of costs. R.S.O. 1970, c. 183, s. 12.

Arrest for non-payment of money, costs, etc., abolished

**13.** A married woman is not liable to arrest on mesne or final process. R.S.O. 1970, c. 183, s. 13.

Married women

**14.** The security in the action to be given by the defendant pursuant to the order for arrest may be by payment into court of the amount mentioned in the order, or by a bond to the plaintiff by the defendant and two sufficient sureties, or, with the leave of the judge or officer who allows the bond, either one surety or more than two, or, with the plaintiff's consent, by any other form of security. R.S.O. 1970, c. 183, s. 14.

Security by defendant in action

**15.** Where the security is given by bond, the condition shall be that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid, either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced or that the sureties will do so for him. R.S.O. 1970, c. 183, s. 15.

Condition of bond

**16.** A person who has been indemnified for so doing by a solicitor concerned for the defendant shall not be a surety in such bond. R.S.O. 1970, c. 183, s. 16.

Persons ineligible as sureties

**17.** Where the plaintiff's claim exceeds \$4,000, it is sufficient for each surety to justify in \$4,000 beyond the amount of the claim. R.S.O. 1970, c. 183, s. 17.

Justification when claim over \$4,000

**18.** The bond shall be filed in the office in which the action was commenced, and may be allowed by the proper officer in such office or by the local judge or master upon service upon the plaintiff or his solicitor of notice of the filing of the bond and of the names and addresses of the sureties and a copy of an appointment from such officer, local judge, or master at least forty-eight hours, unless otherwise directed by the officer, judge or master, before the time named in the appointment. R.S.O. 1970, c. 183, s. 18.

Allowance of bond

**19.—(1)** Where security is desired to be given by payment of money into court, it may be paid in without an order, and stands as security to the plaintiff that the defendant will pay the amount by the judgment in the action adjudged

Security by payment into court

to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced.

Substitution  
of other  
security  
after pay-  
ment into  
court

(2) After the payment of money into court, a bond or other security mentioned in section 14 may be substituted therefor, and the money paid in shall be repaid upon the production of a certificate of the allowance of the bond or other security signed by the officer allowing it or by the plaintiff's solicitor. R.S.O. 1970, c. 183, s. 19.

Control of  
court

**20.**—(1) The money paid in and the security and all proceedings thereon are subject to the order and control of the court or a judge.

Discharge of  
defendant  
on giving  
security

(2) The delivery to the sheriff executing the order for arrest of a certificate of the Accountant of the Supreme Court of the payment of the money into court, or of a certificate of the allowance of the bond or other security signed by the officer allowing it, or by the plaintiff or his solicitor, to the sheriff, entitles the defendant to be discharged out of custody. R.S.O. 1970, c. 183, s. 20.

Time for  
delivery of  
statement  
of claim

**21.** Where a defendant is taken or detained in custody under an order for arrest in default of giving security, the plaintiff, if he has not already delivered his statement of claim, shall deliver it within one month after the arrest, or within the time prescribed by the rules of the Supreme Court, whichever is the earlier date, otherwise the defendant, unless further time is allowed by the court or a judge, is entitled to be discharged out of custody. R.S.O. 1970, c. 183, s. 21.

Order to  
bring body  
into court

**22.**—(1) Where, on the expiration of an order to return an order for arrest, the sheriff returns *cepi corpus* thereon, an order may thereupon issue requiring the sheriff, within six days after the service of the order, to bring the defendant into court, by bringing in the body or by causing security in the action to be given, and, if the sheriff does not obey the order, an attachment may be granted for disobedience thereto.

Where  
sheriff  
goes out of  
office

(2) Where a sheriff, before going out of office, makes an arrest and takes security under the order for arrest and makes a return of *cepi corpus*, the order shall, within the time allowed by law, be directed to him notwithstanding that he may be out of office before the order is issued. R.S.O. 1970, c. 183, s. 22.

**23.** An order shall not be made for setting aside an attachment regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of a bail bond, unless the application for the order, if made on the part of the original defendant, be grounded on an affidavit of merits, or, if made on the part of the sheriff, or a surety, or any officer of the sheriff, unless the application be grounded on an affidavit showing that the application is really and truly made on the part of the sheriff, or surety, or officer of the sheriff, as the case may be, at his own or their own expense, and for his or their indemnity only, and without collusion with the original defendant. R.S.O. 1970, c. 183, s. 23.

Order to set aside attachment or stay proceedings on bond, affidavit of merits, etc.

**24.**—(1) A person arrested upon an order for arrest may apply to the court or a judge for an order that he be discharged out of custody, and the court or judge, subject to appeal, may make such order thereon as seems just.

Application for discharge from custody by defendant

(2) A judge of a county court making an order for arrest, whether in the Supreme Court or in his own court, shall, in respect of such order and the arrest made thereupon, possess all the powers of a judge of the Supreme Court under this section, and may in like manner, on application to him, order the defendant to be discharged out of custody, or make such order therein as to him seems just.

Powers of county court judge

(3) Any such order made by a judge of the county court may be discharged or varied by the Divisional Court. R.S.O. 1970, c. 183, s. 24.

Discharge or variance of order

**25.** Where the defendant is described in the order for arrest, or affidavit therefor, by initials, or by wrong name, or without a given name, he shall not for that cause be discharged out of custody or the security be delivered up to be cancelled. R.S.O. 1970, c. 183, s. 25.

Misnomer of defendant in order for arrest

**26.**—(1) The sureties may at any time surrender their principal to the sheriff of the county in which the principal is resident or found, and the sheriff shall receive the principal into his custody and give the sureties a certificate under his hand and seal of office of the surrender, for which certificate he is entitled to the sum of \$1.

Surrender of debtor by sureties

(2) A judge of the court in which the action is pending, upon proof of due notice to the plaintiff or his solicitor of the surrender, and upon production of the sheriff's certificate thereof, shall order the security to be cancelled, and thereupon all sureties are discharged.

Order to cancel security and discharge of sureties

Transfer of  
person  
arrested out  
of his  
county

(3) Where a person is surrendered by his sureties to the sheriff of a county other than that in which he resides or carries on business, he is entitled to be transferred to the correctional institution in his own county on prepaying the expenses of his removal, and the sheriff in whose county he was arrested may transfer him accordingly, but, if the sheriff declines to act without an order of the court or a judge, such order may be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1970, c. 183, s. 26.

When *ca. sa.*  
may issue  
without  
order

**27.**—(1) Where a defendant has been arrested and has given security in the action pursuant to the order for arrest or is imprisoned or detained in custody in default of giving security, unless he has been discharged under section 51, any judgment that the plaintiff may obtain in the action may be enforced by writ of *capias ad satisfaciendum* without an order therefor, but where the defendant is so imprisoned or detained in custody, the plaintiff shall issue such writ within fourteen days after he has become entitled to enter final judgment.

When order  
for *ca. sa.*  
necessary

(2) Where the defendant has not been arrested or has been discharged under section 51, if the plaintiff, by the affidavit of himself or of some other person, shows to the satisfaction of a judge of the Supreme Court, or, where the action is in a county court, to a judge of such court, that he has recovered judgment against the defendant for not less than \$100, exclusive of costs, and also such facts and circumstances as satisfy the judge that there is good and probable cause for believing either that the defendant, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular, or that the defendant has parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, the judge may order that a writ of *capias ad satisfaciendum* be issued.

*Ca. sa.* when  
returnable

(3) Every writ of *capias ad satisfaciendum* against a debtor who has not been previously arrested or who has not given security pursuant to an order for arrest is returnable immediately after its execution and continues in force for two months from the day of its issue and no longer, but on its expiration another writ may be obtained from a judge's order as provided by subsection (2). R.S.O. 1970, c. 183, s. 27.

*Ca. sa.* to fix  
liability of  
sureties

**28.**—(1) A writ of *capias ad satisfaciendum* issued for the purpose of fixing the liability of the sureties is returnable on a day certain to be named therein not later than fourteen

days from the date of the teste of the writ, and shall be delivered to the sheriff of the county in which the action was commenced eight clear days before the return day so named.

(2) The sureties shall take notice of the delivery of the writ, and it is not necessary for the plaintiff to give them any further or other notice thereof. R.S.O. 1970, c. 183, s. 28. Duty of sureties

**29.**—(1) An action shall not be brought upon the bond or other security given in an action pursuant to an order for arrest until after the return of a writ of *capias ad satisfaciendum* for the purpose of fixing the liability of the sureties. Postponement of action on security

(2) To such a writ the sheriff may return *non est inventus*, without taking any steps to arrest the defendant, unless he is already in, or is rendered into, his custody. R.S.O. 1970, c. 183, s. 29. Return to writ

**30.** In an action upon the bond, the sureties are only liable for the amount recovered by the plaintiff in the action in which the bond was given and the costs of suit, not exceeding in the whole the amount of the penalty in the bond. R.S.O. 1970, c. 183, s. 30. Limitation of liability of sureties

**31.**—(1) Subject to section 26, where the plaintiff brings an action on the bond or other security, the sureties are at liberty to satisfy the bond or security by rendering their principal to the custody of the sheriff of the county in which the action was brought at any time within eight days next after service of the writ of summons upon them, but not at any later period, and, upon notice thereof being given to the plaintiff or his solicitor, the action shall be stayed and the plaintiff is entitled to the costs of the action up to the date of service of the notice. Sureties' right to surrender their principal

(2) Such costs may be taxed upon production of the notice so served without an order, and, if not paid within four days from taxation, the plaintiff may, without an order, sign judgment therefor. R.S.O. 1970, c. 183, s. 31. Costs

**32.** The sheriff, at the request of the person arrested, and upon being prepaid a sum of money sufficient to cover the sheriff's reasonable fees and expenses incident to the delay, shall grant to such person a delay of twenty-four hours after the arrest before committing him to a correctional institution, and shall take him for the twenty-four hours to some safe and convenient house in his county. R.S.O. 1970, c. 183, s. 32. Delay of 24 hours before committal

Right of person arrested to be transferred to correctional institution in his own county

**33.** A person arrested and imprisoned in any other county than that in which he resides or carries on business is entitled to be transferred to the correctional institution in his own county on prepaying the expenses of his removal, and the sheriff in whose county he was arrested may transfer him accordingly, but, if the sheriff declines to act without an order of the court or a judge, such order shall be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1970, c. 183, s. 33.

Security from debtors in custody

**34.**—(1) At any time before the expiration of ten days from the date of the arrest, the defendant is entitled to be released from custody upon paying into court, without special order, the amount named in the order for arrest, together with \$40, to answer the costs that have accrued up to the time limited for giving security in the action pursuant to the order for arrest, or upon giving to the sheriff a bail bond with two sufficient sureties in a penal sum double the amount named in the order for arrest, and upon payment of the sheriff's fees, including the cost of the bond.

Custody of money paid

(2) Moneys so paid into court shall remain in court, subject to order of the court or a judge, as security to the plaintiff that the defendant will cause security in the action to be given pursuant to the order for arrest. R.S.O. 1970, c. 183, s. 34.

Security from debtors in custody

**35.** The sheriff may take from a debtor confined in the correctional institution in his county upon mesne process a bond, with not less than two and not more than four sufficient sureties, to be jointly and severally bound in a penal sum of double the amount for which the debtor is so confined, conditioned that the debtor will observe and obey all notices or orders of court touching or concerning the debtor, or his appearing to be examined *viva voce*, or his returning and being remanded into close custody, and that upon reasonable notice to them or any of them requiring them so to do they will produce the debtor to the sheriff, and also the debtor will, within thirty days, cause the bond, or the bond that may be substituted for it according to the provisions hereinafter contained, to be allowed by the judge of the county court of the county wherein the debtor is confined, and the allowance to be endorsed thereon by the judge. R.S.O. 1970, c. 183, s. 35.

Affidavits of sufficiency

**36.** The sheriff may also require each surety, where there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Ontario (stating where), and is worth the sum for which the debtor is in custody (naming it) and \$200 more, over and above what will pay all his debts, or, where there

are more than two sureties, he may require each surety to make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one-half the sum for which the debtor is in custody (naming it), and \$200 more, over and above what will pay all his debts. R.S.O. 1970, c. 183, s. 36.

**37.** Upon receipt of the bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of sufficiency, if required by the sheriff, the sheriff may permit the debtor to go out of close custody, and, so long as the debtor in all respects observes the conditions of the bond, the sheriff is not liable to the party at whose suit the debtor is confined in any action for the escape of the debtor from a correctional institution. R.S.O. 1970, c. 183, s. 37.

When sheriff  
may allow  
the debtor  
out of close  
custody

**38.**—(1) The debtor may apply for the allowance of the bond upon four clear days notice in writing to the plaintiff or his solicitor, who at the time of the application may object to the sufficiency of the sureties, and if the judge refuses to allow the bond, the debtor may cause another bond, made to the sheriff in the same terms and under the same conditions, to be executed without further application to the sheriff, and may apply in like manner and upon like notice for the allowance thereof, and the bond, if allowed and endorsed as aforesaid, shall be substituted for and have the like effect in all respects as the bond first given to the sheriff would have had upon the allowance thereof and the like remedies may be had thereon, and the first given bond thereupon becomes void.

Application  
for allow-  
ance of bond

(2) The sheriff shall, upon reasonable notice given by the debtor, cause the bond to be produced before the judge. R.S.O. 1970, c. 183, s. 38.

Production  
of bond  
before judge

**39.** Upon the allowance being so endorsed, the sheriff is discharged from all responsibility respecting the debtor, unless he is again committed to the close custody of the sheriff in due form of law. R.S.O. 1970, c. 183, s. 39.

Sheriff's  
discharge  
from  
responsi-  
bility

**40.** In lieu of giving the bond provided for by section 35, the debtor or any person on his behalf may deposit with the sheriff the amount for which he is arrested, and, where the person is held under an order for arrest, the further sum of \$40, and such deposit stands as security in place and for the purposes of the bond provided for by sections 34 and 35, and the money so deposited is subject to the order of a judge of the court in which the order of arrest was made, but such deposit is repayable to the person making it upon the sheriff being furnished with a certificate of the

Deposit in  
lieu of bail  
on arrest  
under civil  
process

judge or officer who allows it, that the bond provided for by sections 34 and 35 has been perfected and allowed. R.S.O. 1970, c. 183, s. 40.

Retaking  
the debtor  
if sureties  
become in-  
sufficient

**41.**—(1) Where the sheriff has good reason to believe that a surety after entering into the bond has become insufficient to pay the amount sworn to in his affidavit of sufficiency, the sheriff may again arrest the debtor and detain him in close custody, and such arrest discharges the sureties from all liability on the bond.

Effect of  
such arrest  
on liability  
of sureties

(2) The sureties of the debtor may set up the arrest and detention as a defence to an action brought against them upon the bond entered into by them, and the defence, if sustained in proof, wholly discharges them.

New bond

(3) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. R.S.O. 1970, c. 183, s. 41.

Assignment  
of bail bond

**42.**—(1) Where default is made in compliance with the conditions of a bail bond to the sheriff, the sheriff shall, upon the request and at the cost of the plaintiff, assign the bond to him, and he may bring an action thereon in his own name.

Discharge of  
sheriff's  
liability

(2) Upon executing the assignment, the sheriff is thenceforth discharged from all liability on account of the debtor or his safe custody.

Rearrest in  
default of  
security in  
action

(3) Where the bond is taken under section 34, if the plaintiff does not take an assignment of it within five days after default, the sheriff may rearrest the defendant in any county and bring him into his own county and detain him in custody until he has given and obtained the allowance of security in the action pursuant to the order for arrest. R.S.O. 1970, c. 183, s. 42.

Defendant's  
right to give  
security  
preserved

**43.** Notwithstanding the default, the defendant may, at any time before judgment in an action brought upon the bail bond to the sheriff or before the expiration of any order to bring in the body, give security in the original action pursuant to the order for arrest. R.S.O. 1970, c. 183, s. 43.

Stay of  
action on  
bail bond

**44.** The plaintiff is not at liberty to proceed upon the bail bond to the sheriff pending an order to bring in the body of the defendant. R.S.O. 1970, c. 183, s. 44.

Power of  
court to  
relieve

**45.** Where an action is brought upon the bail bond to the sheriff, the court or a judge may upon application in such

action give such relief to the plaintiff and defendant in the original action and to the sureties in the bail bond as is just and reasonable, and the order made on any such application has the effect of a defeasance to the bail bond. R.S.O. 1970, c. 183, s. 45.

**46.**—(1) The sureties of a debtor may surrender him into the custody of the sheriff at the correctional institution, and the sheriff or superintendent shall there receive him into custody, and the sureties may set up the surrender, or the offer to surrender and the refusal of the sheriff or superintendent to receive the debtor into custody at the correctional institution, as a defence to any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and the defence, if sustained in proof, discharges them. Surrender  
by sureties

(2) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. R.S.O. 1970, c. 183, s. 46. New bond

**47.**—(1) The party at whose suit a debtor has been confined in execution may, at any time while the debtor is at large upon bail, apply to the court or a judge for an order for the examination *viva voce* on oath of the debtor touching the matters mentioned in section 50, and, if the debtor does not submit himself to be examined pursuant to the order or refuses to make full answer in respect of the matters touching which he is examined to the satisfaction of the court or a judge, the court or judge may order the debtor to be committed to close custody, and the sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order of the court or a judge for again allowing him to go out of close custody, on giving the necessary bond as aforesaid, or until he is otherwise discharged in due course of law. Debtor on  
bail liable  
to be  
examined or  
recommitted

(2) An order for the discharge of the debtor may be made on his showing that he has submitted himself to be examined and made full answer as aforesaid and has thereafter given to the plaintiff or his solicitors five days notice of his intention to apply. R.S.O. 1970, c. 183, s. 47. Order for  
discharge

**48.** If a debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor, is liable only to an action for damages sustained by the person at whose suit the debtor was taken or imprisoned, and is not liable to any other action in consequence of the escape. R.S.O. 1970, c. 183, s. 48. Sheriff's  
liability for  
escape

Discharge of  
debtor from  
custody

**49.** A debtor in close custody in execution or on mesne process and a debtor arrested under a writ of *capias ad satisfaciendum*, though he is not in close custody but has given bail, may, after giving to the person at whose instance he is in close custody or has been so arrested ten days notice in writing of his intention to do so, apply to the court or a judge to be discharged. R.S.O. 1970, c. 183, s. 49.

Examina-  
tion of  
debtor as  
to his  
property,  
etc.

**50.** Where the notice is given by a debtor in close custody in execution or by a debtor who has been arrested under a writ of *capias ad satisfaciendum* and has given bail, the person at whose instance he is in close custody or has been so arrested may apply to the court or a judge for an order that the debtor be examined *viva voce* on oath for the purpose of discovering any property or effects that he is possessed of or entitled to, or that are in the possession or under the control of any other person for the use or benefit of the debtor, or that the debtor having been in possession of may have fraudulently disposed of for the purpose of hindering, delaying, defrauding or defeating his creditors, and touching the debtor's estate and effects and the circumstances under which he contracted the debt or incurred the liability that was the subject of the action in which judgment has been recovered against him, and as to the means and expectations he then had, and as to the property and means he still has, and as to the disposal he may have made of any of his property. R.S.O. 1970, c. 183, s. 50.

Application  
of debtor for  
discharge

**51.—(1)** Upon an application under section 49 and upon the debtor making oath that he is not worth \$20, exclusive of his goods and chattels exempt from seizure under execution, and, in the case of a debtor in execution, that he has submitted himself to be examined pursuant to any order that may have been made for his examination, or that no order for his examination has been served, and where such examination has been had, if the matter thereof is considered satisfactory, and, in the case of a debtor confined in close custody on mesne process, that he does not believe the demand of the plaintiff to be just and for that reason and no other resists payment of it and refuses to suffer judgment to be entered against him for the sum sworn to, and if the cross-examination, if any, of the debtor upon his affidavit is considered satisfactory, the debtor shall be discharged from custody, but the discharge is not a release or satisfaction of the judgment or of the claim of the plaintiff and does not deprive the plaintiff of any remedy against the debtor or his property.

Cross-  
examination  
of debtor on  
affidavit

**(2)** A debtor in close custody upon mesne process may be cross-examined upon his affidavit according to the practice

of the court as to cross-examination upon an affidavit on a motion. R.S.O. 1970, c. 183, s. 51.

**52.** In the case of a debtor in execution, it may be made a condition of his discharge that he first, by assignment or conveyance to be approved of by the court or a judge, assigns and conveys to an assignee for the benefit of his creditors any right or interest he may have in and to any property real or personal, credits or effects, other than goods and chattels exempt from seizure under execution, and, in the case of a debtor in close custody on mesne process, it may be made a condition of his discharge that he first suffer the plaintiff to have judgment against him for the sum sworn to or such part thereof as the court or judge considers just. R.S.O. 1970, c. 183, s. 52.

Discharge may be on condition of assignment by debtor

**53.** In the case of a debtor in execution, if it appears that the debt for which he is in close custody or has been arrested was contracted by fraud, or breach of trust, or under false pretences, or that he wilfully contracted the debt without having had at the time a reasonable expectation of being able to pay or discharge it and with intent to defraud, the court or judge may order the debtor to be remanded into close custody for any period not exceeding twelve months and to be then discharged. R.S.O. 1970, c. 183, s. 53.

Remand into custody in cases of fraud, etc.

**54.** Where the discharge has been unduly or fraudulently obtained by a false allegation of circumstances that, if true, would have entitled the debtor to be discharged, he shall, upon the same being made to appear to the satisfaction of the court or a judge, be liable to be again taken in execution or remanded to his former custody by order of the court or judge. R.S.O. 1970, c. 183, s. 54.

Debtor's liability to be retaken in execution

**55.** The court or judge making an order for the examination of a debtor under this Act may direct the sheriff or superintendent having the custody of the debtor to bring him before the court or judge or before some person to be named in the order for the purpose of being examined, and the sheriff or superintendent shall take the debtor before the court or judge or the person so named for examination in the same manner as if the sheriff or superintendent were acting in obedience to a writ of *habeas corpus ad testificandum*. R.S.O. 1970, c. 183, s. 55.

Production of debtor for examination

**56.** A written order under the hand of the judgment creditor or of the solicitor by whom a writ of *capias ad satisfaciendum* has been issued shall justify the sheriff, superintendent or officer in whose custody the debtor is under the writ, in discharging him, unless, where the order is given by the

Discharge by consent of plaintiff

solicitor, the party for whom such solicitor professes to act has given written notice to the contrary to the sheriff, superintendent or officer, but such discharge is not a satisfaction of the debt and nothing herein contained justifies the solicitor in giving an order for discharge without the consent of his client. R.S.O. 1970, c. 183, s. 56.

When  
plaintiff  
may issue  
other writs

**57.** Neither the taking of a debtor in execution under a writ of *capias ad satisfaciendum* nor his imprisonment thereunder or under this Act nor his discharge from custody by the voluntary action of his creditor or under the powers conferred by this Act operates as a satisfaction or extinguishment of the debt or deprives the creditor of the right to take out execution or other process against the property of the debtor or to take any other proceeding against him in the same manner as if the debtor had not been taken in execution or discharged out of custody. R.S.O. 1970, c. 183, s. 57.

Application  
R.S.O. 1980,  
c. 223

**58.** The *Judicature Act* and the rules of court apply to this Act. R.S.O. 1970, c. 183, s. 58.

## CHAPTER 178

Freshwater Fish Marketing Act  
(Ontario)

## INTERPRETATION

## 1. In this Act,

Interpre-  
tation

- (a) "Corporation" means the Freshwater Fish Marketing Corporation established under the Federal Act;
- (b) "designated area" means the part or parts of Ontario designated by regulations made under section 2;
- (c) "Federal Act" means the *Freshwater Fish Marketing Act* (Canada), as amended or re-enacted from time to time; R.S.C. 1970,  
c. F-13
- (d) "fish" means round, dressed or filleted fish of any species enumerated in the Schedule to the Federal Act, whether fresh or frozen and whether packaged or unpackaged, that are fished for commercial purposes in the designated area, and includes parts of any such fish;
- (e) "fisherman" means a person licensed pursuant to the *Fisheries Act* (Canada) or the regulations thereunder to fish for commercial purposes in the designated area, and includes any person acting on behalf of and representing any two or more persons so licensed; R.S.C. 1970,  
c. F-14
- (f) "inspector" means a person designated by the Minister as an inspector under this Act, or a person declared to be an inspector *ex officio* under this Act;
- (g) "Minister" means the Minister of Natural Resources;
- (h) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 184, s. 1; 1972, c. 4, s. 12.

## POWERS OF THE CORPORATION

2.—(1) The Lieutenant Governor in Council may make regulations designating the Corporation as the body to control the selling and buying of fish in such part or parts of Ontario as may be designated in the regulations. Designation  
of  
Corporation

Director

(2) Where a regulation has been made under subsection (1), the Lieutenant Governor in Council may recommend the appointment of a director of the Corporation. R.S.O. 1970, c. 184, s. 2.

Corporation  
to buy all  
fish offered

3. Where a regulation has been made under subsection 2(1), all fish lawfully fished by a fisherman and offered by him for sale to the Corporation for disposal in intra-provincial trade shall be bought by the Corporation from the fisherman upon such terms and conditions and for such price as may be agreed upon by the Corporation and the fisherman subject to any applicable scheme for payment established and operated by the Corporation pursuant to section 24 of the Federal Act. R.S.O. 1970, c. 184, s. 3.

## INSPECTORS

Designation  
of inspectors

4.—(1) The Minister may designate an inspector or inspectors whose duties are to carry out the provisions of this Act and the regulations.

Idem

R.S.C. 1970,  
c. F-12

(2) The Lieutenant Governor in Council may declare that inspectors designated under the Federal Act or appointed under the *Fish Inspection Act* (Canada) are inspectors *ex officio* under this Act. R.S.O. 1970, c. 184, s. 4.

Powers of  
inspector

5.—(1) An inspector may at any reasonable time,

- (a) enter any place or premises that he reasonably believes is being used to store, pack, process or prepare fish for market or shipment or any vehicle, trailer, vessel, railway car or aircraft that he reasonably believes is being used to ship or convey fish for market;
- (b) open any container found therein or examine anything found therein that he reasonably believes contains any such fish, and take samples thereof; and
- (c) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, shipping bills, bills of lading, invoices or other documents or papers concerning any matter relevant to the administration of this Act.

Certificate  
of appoint-  
ment

(2) An inspector shall be furnished with a certificate of his designation or appointment as an inspector and on entering any place, premises or conveyance referred to in subsection (1) shall, if so required, produce the certificate to the person in charge thereof.

(3) The owner or person in charge of any place, premises or conveyance referred to in subsection (1) and every person found therein shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and powers under this Act and shall furnish him with such information with respect to the administration of this Act as he may reasonably require. R.S.O. 1970, c. 184, s. 5.

**6.**—(1) Where an inspector believes on reasonable grounds that any provision of this Act has been contravened, he may seize and detain the fish by means of or in relation to which he reasonably believes the contravention was committed.

(2) Any fish seized and detained pursuant to subsection (1) shall not be detained after,

(a) in the opinion of an inspector, the provisions of this Act have been complied with; or

(b) the expiration of ninety days from the day of seizure,

unless before that time proceedings have been instituted in respect of the contravention, in which event the fish may be detained until the proceedings are finally concluded.

(3) Where a person has been convicted of a contravention of any provision of this Act, any fish by means of or in relation to which the offence was committed is, upon the conviction, in addition to any penalty imposed, forfeited to Her Majesty if such forfeiture is directed by the court. R.S.O. 1970, c. 184, s. 6.

**7.**—(1) No person shall obstruct or hinder an inspector in carrying out his duties or exercising his powers under this Act or the regulations.

(2) No person shall make a false or misleading statement either orally or in writing to an inspector engaged in carrying out his duties or exercising his powers under this Act or the regulations. R.S.O. 1970, c. 184, s. 7.

#### REGULATION OF INTRAPROVINCIAL TRADE

**8.** Except as otherwise provided in the regulations or except in accordance with the terms and conditions set forth in any licence that may be issued by the Corporation in that behalf, no person other than the Corporation or an agent of the Corporation shall sell or buy, or agree to sell or buy, fish. R.S.O. 1970, c. 184, s. 8.

## PARTICIPATING AGREEMENT

Agreement

**9.** The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario enter into an agreement with the Government of Canada providing for,

- (a) the sharing by Ontario with the Government of Canada of initial operating and establishment expenses of the Corporation and of any losses incurred as a result of,
  - (i) the guarantee of repayment of loans and interest thereon, made by any bank to the Corporation, and
  - (ii) loans made by Canada to the Corporation,under subsection 17 (1) of the Federal Act;
- (b) the performance by the Corporation, on behalf of Ontario, of functions relating to intraprovincial trade in fish;
- (c) the undertaking by Ontario of arrangements for the payment, to the owner of any plant or equipment used in storing, processing or otherwise preparing fish for market, of compensation for any such plant or equipment that will or may be rendered redundant by reason of any operations authorized to be carried out by the Corporation; and
- (d) such other matters as may be agreed upon by the Minister and the Government of Canada. R.S.O. 1970, c. 184, s. 9.

## OFFENCES AND PENALTIES

Offences

**10.** Every person who, or whose employee or agent, contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. R.S.O. 1970, c. 184, s. 10.

Offence by  
agent or  
employee

**11.** In any prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission. R.S.O. 1970, c. 184, s. 11.

**12.** Any proceedings in respect of an offence against this Act <sup>Time limit</sup> or the regulations may be instituted at any time within one year after the time when the subject-matter of the proceedings arose. R.S.O. 1970, c. 184, s. 12.

#### REGULATIONS

**13.—(1)** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations,

- (a) requiring licences to send, convey or carry fish in Ontario;
- (b) governing the issue and form of licences and prescribing the terms and conditions thereof;
- (c) exempting from the application of all or any of the provisions of this Act, either conditionally or unconditionally and either in general terms or for a specified period, any species of fish, any part of the designated area, any transaction, person or class of transactions or persons;
- (d) respecting the detention of fish seized under this Act and for preserving or safeguarding the fish so detained;
- (e) respecting the disposition of fish forfeited under this Act;
- (f) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Any regulation made under this Act may be limited as <sup>Regulation may be limited</sup> to time and place. R.S.O. 1970, c. 184, s. 13.



## CHAPTER 179

## Frustrated Contracts Act

## 1. In this Act,

Interpre-  
tation

- (a) "contract" includes a contract to which the Crown is a party;
- (b) "court" means the court or arbitrator by or before whom a matter falls to be determined;
- (c) "discharged" means relieved from further performance of the contract. R.S.O. 1970, c. 185, s. 1.

2.—(1) This Act applies to any contract that is governed by the law of Ontario and that has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

Application  
of Act

## (2) This Act does not apply,

Exceptions

- (a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by way of demise;
- (b) to a contract of insurance; or
- (c) to a contract for the sale of specific goods where the goods, without the knowledge of the seller, have perished at the time the contract was made, or where the goods, without any fault on the part of the seller or buyer, perished before the risk passed to the buyer. R.S.O. 1970, c. 185, s. 2.

3.—(1) The sums paid or payable to a party in pursuance of a contract before the parties were discharged,

Adjustment  
of rights and  
liabilities

- (a) in the case of sums paid, are recoverable from him as money received by him for the use of the party by whom the sums were paid; and
- (b) in the case of sums payable, cease to be payable.

## Expenses

(2) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow him to retain or to recover, as the case may be, the whole or any part of the sums paid or payable not exceeding the amount of the expenses, and, without restricting the generality of the foregoing, the court, in estimating the amount of the expenses, may include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the party incurring the expenses.

## Benefits

(3) If, before the parties were discharged, any of them has, by reason of anything done by any other party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefitted the whole or any part of the value of the benefit.

## Assumed obligations

(4) Where a party has assumed an obligation under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court, if it considers it just to do so having regard to all the circumstances, may, for the purposes of subsection (3), treat any benefit so conferred as a benefit obtained by the party who has assumed the obligation.

## Insurance

(5) In considering whether any sum ought to be recovered or retained under this section by a party to the contract, the court shall not take into account any sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

## Special contractual provisions

(6) Where the contract contains a provision that upon the true construction of the contract is intended to have effect in the event of circumstances that operate, or but for the provision would operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the provision and shall give effect to this section only to such extent, if any, as appears to the court to be consistent with the provision.

## Where contract severable

(7) Where it appears to the court that a part of the contract can be severed properly from the remainder of the

contract, being a part wholly performed before the parties were discharged, or so performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract that had not been frustrated and shall treat this section as applicable only to the remainder of the contract. R.S.O. 1970, c. 185, s. 3.



## CHAPTER 180

### Funeral Services Act

#### 1. In this Act,

Interpre-  
tation

- (a) "Board" means the Board of Funeral Services referred to in section 2;
- (b) "embalming" means the preservation of the dead human body, entire or in part, by any means, including the use of chemical substances, fluids or gases ordinarily used, prepared or intended for such purpose, either by the outward application of such chemical substances, fluids or gases on the body or by the introduction thereof into the body by vascular or hypodermic injection or by direct application into the organs or cavities;
- (c) "funeral director" means a person licensed under this Act to engage in providing or directing the providing of funeral services and funeral supplies to the public;
- (d) "funeral services" means the services usually provided by a funeral director;
- (e) "funeral services establishment" means a premises established or maintained for the purpose of providing funeral services or funeral supplies to the public;
- (f) "Minister" means the Minister of Health or such other member of the Executive Council to whom the administration of this Act may be assigned;
- (g) "Registrar" means the Registrar of the Board;
- (h) "regulations" means the regulations made under this Act;
- (i) "Review Board" means the Funeral Services Review Board referred to in section 15. 1976, c. 83, s. 1.

Board of  
Funeral  
Services  
established

2.—(1) The Board of Funeral Services is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Act.

Composition

(2) The Board shall be composed of,

- (a) five funeral directors, one of whom is not licensed to establish or maintain and who does not direct the operation of a funeral services establishment, appointed by the Lieutenant Governor in Council; and
- (b) three persons who are not licensees under this Act and are appointed by the Lieutenant Governor in Council.

Term of  
office

(3) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be re-appointed for further successive terms but shall not be appointed and reappointed for more than six successive years.

Vacancy

(4) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Quorum

(5) Three members of the Board, at least one of whom shall be a member appointed under clause (2) (b), constitute a quorum.

Officers

(6) The members of the Board shall appoint from among the members of the Board the chairman, the vice-chairman and the secretary-treasurer of the Board.

Expenses and  
remuneration  
of members  
of Board

(7) The members of the Board,

- (a) appointed under clause (2) (a), shall be paid by the Board such expenses and remuneration as are prescribed by the regulations; and
- (b) appointed under clause (2) (b), shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Annual  
report

(8) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and the Minister shall submit the report to the Lieutenant Governor in

Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

**3.** The Board shall appoint a Registrar and may employ <sup>Staff</sup> such other officers and such clerks and other employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment. 1976, c. 83, s. 3.

**4.—(1)** The objects of the Board are,

Objects  
of Board

- (a) to regulate the practices of funeral directors in accordance with this Act and the regulations;
- (b) to regulate funeral services establishments in accordance with this Act and the regulations;
- (c) to establish, maintain and develop standards of knowledge and skill among funeral directors;
- (d) to establish, maintain and develop standards of qualification and practice for the practice of funeral directors;
- (e) to establish, maintain and develop standards of qualification for funeral services establishments;
- (f) to establish, maintain and develop standards of professional ethics among funeral directors and funeral services establishment licensees;
- (g) to administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under this Act or the regulations or by any other Act,

in order that the public interest may be served and protected.

**(2)** The Board shall,

Duties

- (a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;
- (b) approve or set courses of study and examinations for the qualification of applicants for licences. 1976, c. 83, s. 4.

Funeral  
director's  
licence

**5.**—(1) No person shall engage in or hold himself out as engaging in providing funeral services or funeral supplies or both to the public unless he is licensed as a funeral director under this Act.

Embalming

(2) No person other than a funeral director shall perform embalming.

Proof of  
performance

(3) For the purposes of subsection (1), proof of the performance of one act in providing funeral services or funeral supplies or both to the public on one occasion is sufficient to establish engaging in providing funeral services or funeral supplies or both to the public.

Exceptions

(4) Subsections (1) and (2) do not apply,

(a) to a student within a training program who is working under the supervision of a funeral director who is physically present;

(b) to a student who is enrolled in a recognized course of funeral services education; or

(c) in a sparsely settled area where a funeral director is not available.

Idem

(5) Subsection (2) does not apply to a student of, or a person employed in, a recognized school of medicine or anatomy. 1976, c. 83, s. 5.

Issuance  
of licences

**6.**—(1) The Registrar shall issue a licence as a funeral director to any applicant therefor who is qualified under this Act and the regulations and has passed such examinations as the Board may set or approve, and the Registrar shall refer to the Licensing Committee every application for a licence as a funeral director that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and  
duties of  
Licensing  
Committee

(2) The Licensing Committee,

(a) shall determine the eligibility of applicants for licences as funeral directors and may require an applicant to take and pass such additional examinations as the Board may set or approve and pay

such fee therefor as the Licensing Committee fixes or to take such additional training as the Licensing Committee specifies; and

- (b) may exempt an applicant for a licence as a funeral director from any licensing requirement.

(3) The Licensing Committee may direct the Registrar <sup>Idem</sup> to issue or refuse to issue licences as funeral directors subject to such terms, conditions and limitations as the Licensing Committee specifies.

(4) The Licensing Committee may review the qualifications <sup>Review of qualifications</sup> of any funeral director and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the Licensing Committee specifies.

(5) The Registrar shall maintain one or more registers <sup>Registers of funeral directors</sup> in which is entered every person who is licensed as a funeral director, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Licensing Committee or Discipline Committee directs.

(6) Every person who was licensed or who held a permit <sup>Continuance of licences and permits</sup> under *The Embalmers and Funeral Directors Act*, being chapter 144 of the Revised Statutes of Ontario, 1970, immediately before the 5th day of December, 1977 shall be deemed to be licensed as a funeral director under this Act, subject to any condition or limitation to which the licence or permit was subject.

(7) The Registrar may cancel a licence as a funeral director for non-payment of any prescribed fee after giving <sup>Cancellation for default of fees</sup> the licensee at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Board in respect of any disciplinary action arising out of his professional conduct while a licensee. 1976, c. 83, s. 6.

7.—(1) The Board shall establish and appoint as herein- <sup>Establishment of committees</sup> after provided the following committees,

(a) Executive Committee;

(b) Licensing Committee;

(c) Complaints Committee;

(d) Discipline Committee,

and may establish such other committees as the Board from time to time considers necessary.

**Vacancies**

(2) Where one or more vacancies occur in the membership of the Board or any committee, the members remaining in office constitute the Board or the committee so long as their number is not fewer than the prescribed quorum. 1976, c. 83, s. 7.

**Executive Committee**

**8.**—(1) The Executive Committee shall be composed of three persons who are members of the Board of whom one shall be a person appointed under clause 2 (2) (b).

**Quorum**

(2) Two members of the Executive Committee constitute a quorum.

**Duties**

(3) The Executive Committee shall perform such functions of the Board as are delegated to it by the Board, the by-laws or this Act and, subject to ratification by the Board at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Board, other than to make, amend or revoke a regulation or by-law. 1976, c. 83, s. 8.

**Licensing Committee**

**9.**—(1) The Licensing Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under clause 2 (2) (b).

**Chairman**

(2) The Board shall name one member of the Licensing Committee to be chairman.

**Quorum**

(3) A majority of the members of the Licensing Committee constitutes a quorum. 1976, c. 83, s. 9.

**Complaints Committee**

**10.**—(1) The Complaints Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed to the Board under clause 2 (2) (b).

**Idem**

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

**Chairman**

(3) The Board shall name one member of the Complaints Committee to be chairman.

(4) A majority of the members of the Complaints Committee constitute a quorum. 1976, c. 83, s. 10.

**11.**—(1) The Complaints Committee shall consider and <sup>Duties</sup> investigate complaints regarding the conduct or actions of any funeral director, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the funeral director whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it <sup>Idem</sup> receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 14; or
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 17 and, where the decision is made under clause (2) (b), its reasons therefor. 1976, c. 83, s. 11. <sup>Decision and reasons</sup>

**12.**—(1) The Discipline Committee shall be composed of three <sup>Discipline Committee</sup> members of the Board, of whom one shall be a person appointed under clause 2 (2) (b).

(2) A majority of the members of the Discipline Committee, of whom one shall be a person appointed under clause 2 (2) (b), constitute a quorum and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote. <sup>Quorum and votes</sup>

Chairman

(3) The Board shall name one member of the Discipline Committee to be its chairman.

Disability  
of lay  
member

(4) Where a quorum of the Discipline Committee commences a hearing and the member thereof appointed under clause 2 (2) (b) is unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Reference  
by Board or  
Executive  
Committee

(5) Notwithstanding any other provision of this Act, the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a funeral director. 1976, c. 83, s. 12.

Duties of  
Discipline  
Committee

**13.**—(1) The Discipline Committee shall,

- (a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any funeral director;
- (b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act; and
- (c) perform such other duties as are assigned to it by the Board.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the funeral director is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the funeral director guilty of professional misconduct or of incompetence.

Professional  
misconduct

(3) A funeral director may be found guilty of professional misconduct by the Committee if,

(a) he has been found guilty of an offence relevant to his suitability to engage in the practice of a funeral director, upon proof of such conviction; or

(b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a funeral director <sup>Incompetence</sup> to be incompetent if in its opinion he has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates he is unfit to continue in the practice of a funeral director.

(5) Where the Discipline Committee finds a funeral director <sup>Powers of Discipline Committee</sup> guilty of professional misconduct or incompetence, it may by order,

(a) revoke the licence of the funeral director;

(b) suspend the licence of the funeral director for a stated period;

(c) impose such restrictions on the licence of the funeral director for such a period and subject to such conditions as the Committee designates;

(d) reprimand the funeral director, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;

(e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

(f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that <sup>Costs</sup> the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for his costs or such portion thereof as the Discipline Committee fixes.

Stay on  
appeal for  
incompetence

(7) Where the Discipline Committee revokes, suspends or restricts a funeral director's licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on  
appeal for  
professional  
misconduct

(8) Where the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of  
decision of  
Discipline  
Committee

(9) Where the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

Continuation  
on expiry of  
Committee  
membership

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1976, c. 83, s. 13.

Interpre-  
tation

**14.—**(1) In this section,

(a) "board of inquiry" means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) "incapacitated funeral director" means a funeral director suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the funeral director that he no longer be permitted to engage in the practice of a funeral director or that his practice be restricted.

Reference  
to board  
of inquiry

(2) Where the Registrar receives information leading him to believe that a funeral director may be an incapacitated funeral director he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the funeral director, appoint a board of inquiry composed of at least two funeral directors and one member of the Board appointed under clause 2 (2) (b) who shall inquire into the matter.

(3) The board of inquiry shall make such inquiries as it <sup>Examination</sup> considers appropriate and may require the funeral director to submit to physical or mental examination by such qualified person as the board designates and if the funeral director refuses or fails to submit to such examination, the board may order that his licence as a funeral director be suspended until he complies.

(4) The board of inquiry shall report its findings to the <sup>Hearing by</sup> Executive Committee and deliver a copy thereof and a copy <sup>Licensing</sup> of any medical report obtained under subsection (3) to the <sup>Committee</sup> funeral director about whom the report is made and, if in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Licensing Committee to hold a hearing and may suspend the funeral director's licence until the determination of the question of his capacity becomes final.

(5) The Board, the person whose capacity is being in- <sup>Parties</sup> vestigated and any other person specified by the Licensing Committee are parties to the hearing.

(6) A legally qualified medical practitioner is not com- <sup>Medical</sup> pellable to produce at the hearing his case histories, notes <sup>evidence</sup> or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the Board, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Licensing Committee shall, after the hearing,

<sup>Powers of</sup>  
<sup>Licensing</sup>  
<sup>Committee</sup>

(a) make a finding as to whether or not the funeral director is an incapacitated funeral director; and

(b) where the funeral director is found to be an incapacitated funeral director by order,

(i) revoke his licence as a funeral director,

(ii) suspend his licence as a funeral director for such period as the Committee considers appropriate, or

(iii) attach such terms and conditions to the licence as a funeral director as the Committee considers appropriate.

**Appeals**

(8) Any party to the proceedings before the Licensing Committee under this section may appeal from its decision or order to the Divisional Court in accordance with the rules of court and the provisions of section 22 apply with necessary modifications as if it were an appeal from a decision or order of the Discipline Committee. 1976, c. 83, s. 14.

**Funeral  
Services  
Review  
Board**

**15.**—(1) The board known as the Funeral Services Review Board is continued.

**Composition**

(2) The Review Board shall be composed of not fewer than three and not more than seven members who shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council shall designate one of the members of the Review Board to be chairman and one to be vice-chairman.

**Disquali-  
fication**

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been a member of the governing body of a health discipline or who is or has been licensed under this Act or licensed or registered under any Act governing a health practice shall be a member of the Review Board.

**Term**

(4) The members of the first Review Board may be appointed for a term of one, two or three years and thereafter appointments and reappointments shall be for a term of three years.

**Vacancies**

(5) Every vacancy on the Review Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

**Quorum**

(6) A majority of the members of the Review Board constitute a quorum.

(7) The members of the Review Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council. Remuneration

(8) The Review Board may prescribe and adopt a seal. Seal

(9) Such employees as are necessary to carry out the duties of the Review Board under this Act shall be employed under the *Public Service Act*. 1976, c. 83, s. 15. Review Board employees  
R.S.O. 1980,  
c. 418

**16.—**(1) The Review Board shall, Duties of Review Board

(a) conduct such hearings and perform such duties as are assigned to it by or under this Act; and

(b) submit an annual report on its activities to the Minister which shall include such additional information as the Minister may require and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(2) The Review Board may obtain expert or professional advice in connection with a hearing or complaint but the adviser shall be a person independent of, Expert advice

(a) the parties in the case of a hearing; or

(b) the complainant and the licensee complained against in the case of a complaint,

and in the case of a hearing, the nature of the advice shall be made known to the parties in order that they may make submissions as to the advice. 1976, c. 83, s. 16.

**17.—**(1) Where the Complaints Committee has made a disposition of a complaint respecting a funeral director in accordance with the provisions of this Act, the Registrar shall send to the funeral director and to the complainant by prepaid first class mail, a copy of the written decision made by the Complaints Committee including reasons therefor, if any, together with notice advising the complainant of his right of review under subsection (2). Complaints

(2) A complainant or the funeral director complained against who is not satisfied with the decision made by the Complaints Committee disposing of a complaint, except a decision to refer a matter to the Discipline Committee, may within twenty days of receipt of the written decision Review of complaints

request the Review Board to review the decision and the Review Board shall require the Registrar to transmit to the Review Board within fifteen days of the Review Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Review Board shall review the decision after giving the complainant an opportunity to state his complaint and the funeral director an opportunity to state his answer thereto, either personally, by his agent or in writing. 1976, c. 83, s. 17.

Investigation of complaint by Review Board

**18.** Where a complaint respecting a funeral director has not been disposed of by the Complaints Committee within sixty days after the complaint is made, the Review Board upon application therefor may require the Complaints Committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Review Board by the Committee within sixty days after the Review Board's request, the Review Board shall undertake such investigation and possesses all the powers of investigation that the Complaints Committee or the Registrar has conferred upon it or him in this Act. 1976, c. 83, s. 18.

Powers of Review Board after review or investigation of complaint

**19.—(1)** The Review Board may after review or investigation of a complaint under section 17 or 18, refer the complaint to the Complaints Committee and the Review Board may,

- (a) confirm the decision, if any, made by the Complaints Committee;
- (b) make such recommendations to the Complaints Committee as the Review Board considers appropriate; or
- (c) require the Complaints Committee to take such action or proceedings as the Committee is authorized to undertake under this Act.

Review Board quorum

**(2)** A majority of the members of the Review Board constitute a quorum for purposes of investigation or review of a complaint or for a hearing.

Decision and reasons

**(3)** The Review Board shall give its decision and reasons therefor in writing to the complainant and the funeral director complained against. 1976, c. 83, s. 19.

Notice of proposal to refuse registration

**20.—(1)** Where the Licensing Committee proposes to refuse to grant a funeral director's licence to an applicant, or proposes to attach terms, conditions or limitations to a

licence, the Registrar on behalf of the Committee shall serve notice of the proposal of the Committee, together with written reasons therefor, on the applicant or licensee and a copy thereof to the Review Board.

(2) Subsection (1) does not apply to a refusal to grant a licence to a person who was previously licensed and whose licence was suspended or revoked as a result of a decision of the Discipline Committee. Exemptions

(3) A notice under subsection (1) shall inform the applicant or licensee that he is entitled to a hearing by the Review Board or to a review by the Review Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Review Board requiring a hearing or such review by the Review Board, as he specifies. Notice  
requiring  
hearing  
or review

(4) Where an applicant or licensee does not require a hearing or review by the Review Board in accordance with subsection (3), the Review Board shall so notify the Licensing Committee and the Committee may carry out the proposal stated in its notice under subsection (1). Powers of  
Licensing  
Committee  
where  
hearing or  
review

(5) The findings of fact of the Review Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. Findings  
of fact

R.S.O. 1980,  
c. 484

(6) The provisions of subsections (2) to (5) and subsections 21 (7) and (8) apply with necessary modifications to proceedings before the Review Board under this section. Procedures  
on hearings

(7) The Review Board shall, after the hearing or review, Powers of  
Review  
Board upon  
hearing or  
review

(a) confirm the proposed decision of the Licensing Committee; or

(b) require the Licensing Committee to permit the applicant to take qualifying examinations or additional training as a condition for licensing, or both as specified by the Licensing Committee; or

(c) require the Licensing Committee to direct the Registrar to register the applicant on any appropriate register subject to such conditions as the Review Board considers appropriate in cases where the Review Board finds that the applicant meets the

requirements for licensing and that the Committee has exercised its powers improperly; or

- (d) refer the matter back to the Licensing Committee for further consideration and the Review Board may make such recommendations as it considers appropriate in the circumstances.

**Parties**

(8) The Licensing Committee and the applicant or licensee are parties to proceedings before the Review Board under this section.

**Appeals**

(9) Any party to proceedings before the Review Board under this section may appeal from its decision or order to the Divisional Court in accordance with the rules of court and the provisions of section 22 apply with necessary modifications as if it were an appeal from a decision or order of the Discipline Committee. 1976, c. 83, s. 20.

**Parties to discipline proceedings**

**21.—**(1) In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

**Examination of documentary evidence**

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

**Members holding hearing not to have taken part in investigation, etc.**

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

**In camera**  
R.S.O. 1980,  
c. 484

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the

Committee shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed;  
or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost. Recording of evidence

(6) Notwithstanding the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it. Evidence R.S.O. 1980, c. 484

(7) No member of the Discipline Committee shall participate in a decision of the committee following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties. Only members at hearing to participate in decision

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to him by the Committee within a reasonable time after the matter in issue has been finally determined. 1976, c. 83, s. 21. Release of documentary evidence

**22.—**(1) Any party to proceedings before the Discipline Committee may appeal from its decision or order to the Divisional Court in accordance with the rules of court. Appeal to court

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Committee appealed from and may exercise all powers of the Committee and may direct the Committee or the Board to take any action which the Committee or the Board may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Committee, or the court may refer the matter back to the Committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1976, c. 83, s. 22. Powers of court on appeal

Restoration  
of licence

**23.**—(1) A person whose licence as a funeral director has been revoked or suspended for cause under this Act, or whose licence or permit was suspended or cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence as a funeral director or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension.

Reference to  
Discipline  
Committee or  
Licensing  
Committee

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Licensing Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Board and to the former licensee.

Procedures

(3) The provisions of this Act applying to proceedings of the Review Board on hearings and review in respect of applications for registration, except subsection 20 (9), apply with necessary modifications to proceedings of the Licensing Committee and Discipline Committee under this section. 1976, c. 83, s. 23.

Funeral  
services  
establish-  
ment  
licence

**24.**—(1) No person shall establish or maintain in any premises a funeral services establishment except under the authority of a licence issued to him in respect of the premises by the Registrar under this Act, and the Registrar may issue a licence for a funeral services establishment subject to such conditions as the Registrar may specify in the licence.

Issuance  
of funeral  
services  
establish-  
ment  
licence

(2) Subject to subsection (3) and section 25, any person who applies in accordance with the regulations for a licence to establish and maintain in a specified premises a funeral services establishment and who meets the requirements of this Act and the regulations is entitled to be issued the licence in respect of the premises.

Idem.  
corporations

(3) The Registrar shall not issue a funeral services establishment licence to a corporation unless,

(a) each one of a majority of the directors of the corporation is a Canadian citizen or a resident of Ontario; and

(b) at least one of the directors of the corporation is a funeral director. 1976, c. 83, s. 24.

Grounds  
for  
refusal  
of funeral  
services  
establish-  
ment  
licence

**25.** Subject to section 28, the Registrar may refuse to issue a funeral services establishment licence where, in his opinion,

- (a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the funeral services establishment will not be operated or maintained in accordance with the law and with honesty and integrity;
- (b) the proposed funeral services establishment or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location; or
- (c) the equipment and premises are not suitable for the providing of funeral services. 1976, c. 83, s. 25.

**26.** The Registrar may refuse to renew or may suspend or revoke a funeral services establishment licence,

Revocation  
and  
refusal  
to renew

- (a) where any person has made a false statement in the application for the licence or a renewal thereof or in any certificate, report or other document or information that is signed by the licensee or a person authorized by the licensee and that is required to be furnished by this Act or the regulations or any other Act or regulation that applies to the funeral services establishment;
- (b) where there is a breach of a condition of the licence;
- (c) where the licensee does not comply with this Act or the regulations;
- (d) where a change in the officers or directors of any corporation that is a licensee would afford grounds for refusing to issue a funeral services establishment licence under clause 25 (a); or
- (e) for any reason that would disentitle the licensee to the issuance of a licence under section 25. 1976, c. 83, s. 26.

**27.—**(1) Where the Registrar issues a funeral services establishment licence and the licensee is dissatisfied with the conditions thereof prescribed by the Registrar, he may by written notice given to the Registrar and the Review Board require a hearing by the Review Board, and the Review Board shall appoint a time for and hold a hearing.

Hearing  
re terms  
of  
licence

Decision  
of Review  
Board

(2) Following upon a hearing under subsection (1), the Review Board may affirm the conditions prescribed for the licence by the Registrar or may cancel such conditions or may prescribe such other conditions for the licence in the place of those prescribed by the Registrar as it considers proper and such conditions shall be conditions of the licence. 1976, c. 83, s. 27.

Proposal  
to refuse  
to issue  
or renew  
or to  
revoke

**28.**—(1) Where the Registrar proposes to refuse to issue or renew or to revoke a funeral services establishment licence, the Registrar shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee, as the case may be.

Notice

(2) A notice under subsection (1) shall inform the applicant or licensee, as the case may be, that he is entitled to a hearing by the Review Board if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Registrar and the Review Board requiring a hearing by the Review Board and he may so require such a hearing.

Powers of  
Registrar  
where no  
hearing

(3) Where the applicant or licensee does not require a hearing by the Review Board in accordance with subsection (2), the Registrar may carry out the proposal stated in the notice under subsection (1).

Power of  
Review  
Board  
where  
hearing

(4) Where the applicant or licensee requires a hearing by the Review Board in accordance with subsection (2), the Review Board shall appoint a time for and shall hold the hearing any may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Review Board considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Review Board may substitute its opinion for that of the Registrar.

Extension  
of time  
for  
requiring  
hearing

(5) The Review Board may extend the time for the giving of notice requiring a hearing by the applicant or licensee under this section either before or after the expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the applicant or licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Review Board may give such directions as it considers proper consequent upon the extension.

Continua-  
tion of  
licence  
pending  
renewal

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of the funeral services establishment licence, the licensee has applied for renewal

of the licence and paid the prescribed fee, the licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Review Board has expired and, where a hearing is required, until the Review Board has made its decision. 1976, c. 83, s. 28.

**29.**—(1) The Registrar, the applicant or licensee who has <sup>Parties</sup> required the hearing and such other persons as the Review Board may specify are parties to proceedings before the Review Board under this Act.

(2) Notice of a hearing under section 27 or 28 shall <sup>Notice of hearing</sup> afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention, as the case may be, of the licence.

(3) Any party to proceedings under section 27 or 28 shall be afforded an opportunity to examine before the <sup>Examination of documentary evidence</sup> hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Review Board holding a hearing shall not have taken part before the hearing in any <sup>Members holding hearing not to have taken part in investigation, etc.</sup> investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Review Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Review Board at a <sup>Recording of evidence</sup> hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) The findings of fact of the Review Board following upon <sup>Findings of fact</sup> a hearing shall be based exclusively on evidence admissible

or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484

Only  
members at  
hearing to  
participate  
in decision

(7) No member of the Review Board shall participate in a decision of the Review Board following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Review Board shall be given unless all members so present participate in the decision.

Release of  
documentary  
evidence

(8) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Review Board within a reasonable time after the matter in issue has been finally determined.

Appeal to  
court

(9) Any party to the proceedings before the Review Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Record to  
be filed  
in court

(10) Where any party appeals from a decision or order of the Review Board, the Review Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Review Board's record, shall constitute the record in the appeal.

Powers of  
court on  
appeal

(11) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Review Board and may exercise all powers of the Review Board to direct the Registrar to take any action which the Review Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Registrar or of the Review Board, or the court may refer the matter back to the Review Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1976, c. 83, s. 29.

Licences  
not  
transferable

**30.—**(1) A funeral services establishment licence is not transferable.

Notice  
of change

(2) Where the licensee is a corporation, the corporation shall notify the Registrar in writing within fifteen days of any change in the officers or directors of the corporation. 1976, c. 83, s. 30.

**31.**—(1) The Registrar may appoint in writing one or more persons as inspectors for the purposes of any section or portion of this Act or the whole or any portion or section of a regulation made under this Act that is referred to in the appointments, and, in an appointment, may limit the authority of an inspector in such manner as the Registrar considers necessary or advisable.

(2) The Registrar shall issue to every inspector a certificate of his appointment and every inspector, in the execution of his duties under this Act and the regulations, shall produce his certificate of appointment upon request.

(3) An inspector may at any reasonable time enter upon the premises of a funeral services establishment to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(4) Where an inspector has reasonable grounds to believe that any premises are being used by any person as a funeral services establishment in respect of which there is not a valid licence issued under this Act, the inspector may at any reasonable time enter upon the premises other than a residence of such person to make an inspection for the purpose of determining whether or not the person is in contravention of subsection 24 (1).

(5) Where the Registrar has reasonable grounds to believe that a funeral director has committed an act of professional misconduct or incompetence, the Registrar may by order direct an inspector to make an investigation to ascertain whether such an act has occurred and the inspector shall report the result of his investigation to the Registrar.

(6) For purposes relevant to the subject-matter of an investigation under this section, the inspector making the investigation may inquire into and examine the premises and practice of the funeral director in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the premises other than a residence of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the inspector has the powers of a commissioner under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

Appointment  
of  
inspectors

Certificate  
of  
appointment

Inspection

Idem

Investigation

Powers of  
inspector

R.S.O. 1980,  
c. 411

Obstruction  
of  
inspector

(7) No person shall obstruct an inspector making an investigation or an inspection under this section or withhold from him or conceal or destroy any book, record, document or thing relevant to the subject-matter of the investigation or inspection.

Search  
warrant

(8) Where a justice of the peace is satisfied upon an *ex parte* application by the person making an investigation or an inspection under this section,

- (a) that the investigation has been ordered and that such person has been directed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation; or
- (b) that the inspector has reasonable ground for believing that it is necessary to enter any building, dwelling, receptacle or place to ensure that the provisions of this Act and the regulations are being complied with or to determine whether or not any premises are being used as a funeral services establishment in respect of which there is not a valid licence issued under this Act,

the justice of the peace may, whether or not an investigation or inspection has been attempted under subsection (3), (4) or (6), issue an order authorizing the person making the investigation or inspection, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for the books, records, documents or things referred to in clause (a) or for any books, records, documents or things related to the subject-matter of an inspection for a purpose mentioned in clause (b) and to examine such books, records, documents or things, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation or inspection to make the search at night.

Removal  
of books,  
etc.

(9) An inspector making an investigation or inspection under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the person whose business is being investigated or inspected and to the subject-matter

of the investigation or inspection for the purpose of making copies of such books, records, documents or things, but such copying shall be carried out with reasonable dispatch and the books, records, documents or things in question shall be promptly thereafter returned to the person whose business is being investigated or inspected.

(10) Any copy made as provided in subsection (9) and certified to be a true copy by the person making the investigation or inspection is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record, document or thing and its contents. Admissibility  
of copies

(11) The Registrar shall report the results of an investigation ordered under subsection (5) to the Board or the Executive Committee or to such other committee as he considers appropriate. 1976, c. 83, s. 31. Report of  
Registrar

**32.**—(1) Every person employed in the administration of this Act, including any person making an inquiry, investigation or inspection under section 31 and any member of the Board or a committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, investigation or inspection under section 31 and shall not communicate any such matters to any other person except, Matters  
confidential

(a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations or by-laws. 1976, c. 83, s. 32. Testimony  
in civil  
suit

**33.**—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Board may make regulations, Regulations

- (a) governing applications for licences and renewals of licences;
- (b) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (c) providing for the expiration and renewal of funeral services establishment licences;
- (d) requiring the payment of annual fees by funeral directors and fees for the issuing of licences or any class thereof, for the renewals of licences or any class thereof, for the registration of students, and for examinations and continuing education, including penalties for late payment, and payment for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (e) prescribing the qualifications for and conditions of registration of students and governing in-service training for students;
- (f) providing for a program of continuing education of funeral directors to maintain their standard of competence and requiring funeral directors to participate in such continuing education;
- (g) respecting the duties and authority of the Registrar;
- (h) prohibiting the providing or the directing of the providing of funeral services where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (i) governing standards of practice for funeral directors and respecting the methods and materials that may be used for embalming;
- (j) defining professional misconduct for the purposes of this Act;
- (k) providing for the maintenance and inspection of registers of persons licensed to practice as funeral directors, of students and of persons licensed to establish and maintain funeral services establishments;

- (l) prescribing the records that shall be kept by funeral directors and by funeral services establishment licensees;
- (m) requiring and providing for the inspection and examination of the premises, records and equipment of funeral directors and funeral services establishments;
- (n) authorizing persons other than funeral directors to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;
- (o) providing for the compilation of statistical information on the supply, distribution and professional activities of funeral directors and funeral services establishments and requiring funeral directors and funeral services establishment licensees to provide the information necessary to compile such statistics;
- (p) respecting the reporting and publication of decisions in disciplinary matters;
- (q) prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;
- (r) governing the construction, location, equipment, maintenance, hygienic practices and repair of and additions or alterations to funeral services establishments and governing the information, plans and materials that shall be furnished to the Registrar;
- (s) governing the equipment and hygienic practices for the transportation of dead human bodies;
- (t) regulating, controlling and prohibiting the use of terms, titles or designations by licensees under this Act in respect of their businesses or practices;
- (u) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standards of practice, qualifications and continuing education of licensees under this Act and reporting and making recommendations to the Board and to the Licensing Committee thereon;

- (v) prescribing forms and providing for their use;
- (w) providing for the exemption of any person from any provision of this Act or the regulations under such special circumstances in the public interest as the Board considers advisable and prescribing conditions that shall attach to such exemptions or to any such exemption;
- (x) prescribing the expenses and remuneration of members of the Board for the purpose of clause 2 (7) (a).

Regulations  
by  
Lieutenant  
Governor in  
Council

(2) Where the Minister requests in writing that the Board make, amend or revoke a regulation under subsection (1) and the Board has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request. 1976, c. 83, s. 33.

By-laws

**34.**—(1) The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the Board;
- (b) providing for the execution of documents by the Board;
- (c) respecting banking and finance;
- (d) fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;
- (e) respecting the calling, holding and conducting of meetings of the Board and the duties of members of the Board;
- (f) respecting the calling, holding and conducting of meetings of licensees;
- (g) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (h) delegating to the Executive Committee such powers and duties of the Board as are set out in the by-law,

other than the power to make, amend or revoke regulations and by-laws;

- (i) providing for a code of ethics;
- (j) prescribing forms and providing for their use;
- (k) providing procedures for the making, amending and revoking of the by-laws;
- (l) respecting management of the property of the Board;
- (m) respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (n) providing for the entering into arrangements by the Board for licensees respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by licensees and exempting licensees or any class thereof from all or part of any such levy;
- (o) respecting membership of the Board in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (p) respecting all of the things that are considered necessary for the efficient conduct of the affairs of the Board.

(2) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution of by-laws

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each licensee; and
- (c) shall be available for public inspection in the office of the Board.

(3) At any time before or after receiving a copy of a by-law made under subsection (1) or an amendment thereto, the Minister may, by an order in writing, revoke or amend the by-law or amendment, but a by-law or amendment is effective until so revoked or amended and no act done or Minister may revoke or amend by-laws

right acquired under any such by-law before such revocation or amendment by the Minister is prejudicially affected by the revocation or amendment. 1976, c. 83, s. 34.

Restraining  
orders

**35.**—(1) Where it appears to the Board that any person does not comply with any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Board may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1976, c. 83, s. 35.

Conditions  
to funeral  
director's  
licence

**36.**—(1) It is a condition of every licence as a funeral director,

- (a) that the licensee not direct the operation of more than one funeral services establishment;
- (b) that the licence be posted in a conspicuous place in a part of the funeral services establishment that is open to the public where the funeral director provides or directs the providing of funeral services or funeral supplies to the public;
- (c) that the funeral director have his principal place of residence,
  - (i) in the same municipality as the funeral services establishment where the funeral director provides or directs the providing of funeral services or funeral supplies to the public, or
  - (ii) in sufficient proximity to such funeral services establishment that the funeral director is able to comply with the standards of practice provided for funeral directors by the regulations.

Conditions  
to funeral  
services  
establish-  
ment  
licence

(2) It is a condition of every licence to establish, operate and maintain a funeral services establishment,

- (a) that the operation of the funeral services establishment be under the direction of a funeral director;

- (b) that where the funeral services establishment is operated under a name other than the name of the funeral director who is directing the operation of the establishment, the name of the funeral director shall be stated on all stationery of and in all advertisements by the establishment;
- (c) that the funeral services establishment licence be posted in a conspicuous place in a part of the establishment that is open to the public;
- (d) where the licensee is a corporation,
  - (i) that each one of a majority of the directors of the corporation is a Canadian citizen or a resident of Ontario, and
  - (ii) that at least one of the directors of the corporation is a funeral director. 1976, c. 83, s. 36.

**37.** No person shall transport a dead human body out of Ontario unless it has been embalmed and prepared for transportation by a funeral director. 1976, c. 83, s. 37. Transportation of body out of Ontario

**38.**—(1) Every person who is in contravention of subsection 5 (1) or (2) or subsection 24 (1) is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. Penalties

(2) Every person who, not being a licensee under this Act, uses an occupational designation prescribed or prohibited by the regulations to be used by licensees or any class of licensees under this Act or a like designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. Idem

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. Idem

(4) Where a corporation is convicted of an offence under subsection (1), (2) or (3), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. Corporation

Directors  
and  
officers

(5) Where a corporation has been convicted of an offence under subsection (1), (2) or (3),

(a) each director of the corporation; and

(b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence. 1976, c. 83, s. 38.

Falsifica-  
tion of  
certificates

**39.**—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence or a false certificate or document with respect to an entry in a register under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Offences for  
false  
representa-  
tion

(2) Any person who wilfully procures or attempts to procure himself to be licensed under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1976, c. 83, s. 39.

Onus of  
proof  
respecting  
licensing

**40.** Where licensing under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so licensed under this Act rests upon the accused. 1976, c. 83, s. 40.

Limitation  
for  
malpractice  
actions

**41.** No licensee under this Act is liable to any action arising out of negligence or malpractice in respect of professional services requested or rendered unless such action is commenced within one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which he alleges negligence or malpractice. 1976, c. 83, s. 41.

Service of  
notice

**42.** Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall

be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. 1976, c. 83, s. 42.

**43.** Any statement containing information from the records required to be kept by the Registrar under this Act, pur-  
porting to be certified by the Registrar under the seal of the Board is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. 1976, c. 83, s. 43.

Registrar's  
certificate  
as evidence

**44.** No action or other proceeding for damages shall be instituted against the Review Board, the Board, a committee of the Board or any member of the Review Board, the Board or committee, or any officers, employees, agents or appointees of the Review Board or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. 1976, c. 83, s. 44.

Immunity  
of Review  
Board and  
committees



## CHAPTER 181

## Fur Farms Act

**1.** In this Act,Interpre-  
tation

- (a) "Director" means the Director of the Veterinary Services Branch of the Ministry of Agriculture and Food;
- (b) "fur-bearing animal" means a fisher, fox, marten, mink, raccoon or any other animal that the Lieutenant Governor in Council declares to be a fur-bearing animal for the purposes of this Act;
- (c) "fur farm" means premises where fur-bearing animals are kept in captivity for propagation or the production of pelts for commercial purposes;
- (d) "inspector" means an inspector appointed for the purposes of this Act;
- (e) "licence" means a licence under this Act;
- (f) "Minister" means the Minister of Agriculture and Food;
- (g) "pelt" means the untanned skin of a fur-bearing animal;
- (h) "regulations" means the regulations made under this Act. 1971, c. 29, s. 1; 1972, c. 1 s. 1.

**2.** The administration of this Act is under the control and direction of the Minister. 1971, c. 29, s. 2.

Administra-  
tion of Act

**3.** No person shall commence or continue to be the operator of a fur farm except under the authority of a licence from the Director in respect of that farm. 1971, c. 29, s. 3.

Licence for  
operation of  
a fur farm

**4.** The Director shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee. 1971, c. 29, s. 4.

Issue of  
licence

Responsi-  
bility of  
operator

5.—(1) An operator of a fur farm shall maintain in a clean and sanitary condition the premises in which fur-bearing animals are kept.

Idem

(2) An operator of a fur farm shall ensure that all necessary measures are taken to prevent cruelty to or neglect of the fur-bearing animals on the fur farm.

Idem

(3) An operator of a fur farm shall ensure that the pens and enclosures in which fur-bearing animals are kept are constructed and maintained in a manner that will prevent such animals from escaping and other animals from entering. 1971, c. 29, s. 5.

Permits

6. No person shall.

(a) take or ship, or cause to be taken or shipped, from a fur farm to a point outside Ontario;

(b) take or ship, or cause to be taken or shipped, from a fur farm to a point within Ontario; or

(c) send, or cause to be sent, from a fur farm to a tanner or taxidermist for tanning, plucking or treating in any way,

any fur-bearing animal or pelt except under the authority of a permit prescribed in the regulations. 1971, c. 29, s. 6.

Containers  
to be  
marked

7. A container used in the shipment or transportation of fur-bearing animals or pelts from a fur farm shall be plainly marked on the outside in such a manner as to give the quantity and description of the contents and the names and addresses of the consignor and of the consignee. 1971, c. 29, s. 7.

Inspectors

8.—(1) The Minister may appoint a chief inspector and such other inspectors as he considers necessary to carry out and enforce this Act and the regulations.

Certificate  
of  
appointment

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature or authority of the Minister.

Powers of  
inspector

(3) Subject to subsection (4), an inspector may, for the purpose of carrying out his duties under this Act and the regulations, enter any premises or building used in connection with a fur farm or which he has reason to believe are used in connection with the operation of a fur farm.

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, an inspector shall not enter any part of a dwelling without the consent of the owner or occupant. Entry of dwellings R.S.O. 1980, c. 400

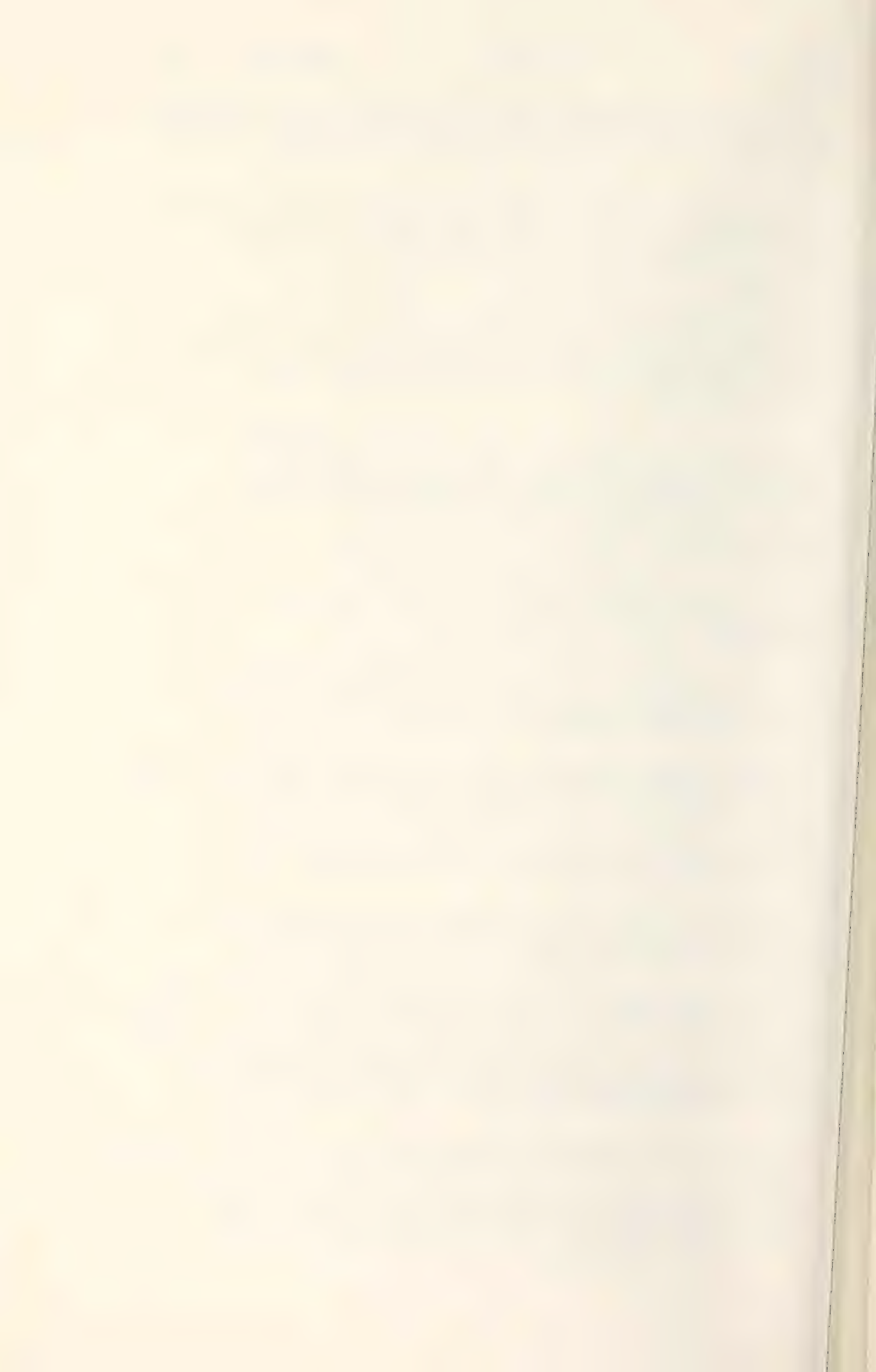
(5) Every person shall, when required by the Director or an inspector, produce any books, records or other documents relating to the operation of a fur farm. 1971, c. 29, s. 8. Production of records, etc.

9. No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information. 1971, c. 29, s. 9. Obstruction of inspector

10. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$100 and for a second or subsequent offence to a fine of not more than \$500. 1971, c. 29, s. 10. Offence

11. The Lieutenant Governor in Council may make regulations, Regulations

- (a) providing for the issue of licences and prescribing the duration, terms and conditions thereof and the fees to be paid therefor;
- (b) declaring animals, other than those mentioned in clause 1 (b), to be fur-bearing animals for the purposes of this Act;
- (c) prescribing forms and providing for their use;
- (d) prescribing the records to be made and kept by the operator of a fur farm;
- (e) prescribing the reports to be submitted to the Director by the operator of a fur farm;
- (f) prescribing, and providing for the issue of, permits for the purposes of section 6;
- (g) prescribing the duties of inspectors;
- (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1971, c. 29, s. 11.



## CHAPTER 182

### Game and Fish Act

#### 1. In this Act,

Interpre-  
tation

1. "amphibian" means any species of Amphibia that the Lieutenant Governor in Council declares to be an amphibian and includes any part and the eggs of such species;
2. "Board" means the Game and Fish Hearing Board referred to in section 38;
3. "body-gripping trap" means a trap designed to capture an animal by seizing and holding the animal by any part of its body but does not include a trap designed to capture a mouse or a rat;
4. "closed season" means a period that is not an open season;
5. "dog" means any of the species *Canis familiaris* Linnaeus;
6. "domestic animals and domestic birds" includes any non-native species kept in captivity, except pheasants, and any fur-bearing animal kept on a fur farm, as defined in the *Fur Farms Act*, but does not include native species otherwise kept in captivity or non-native species present in the wild state; R.S.O. 1980,  
c. 181
7. "farmer" means a person whose chief occupation is farming and,
  - i. who is living upon and tilling his own land, or land to the possession of which he is for the time being entitled, or
  - ii. who is a *bona fide* settler engaged in clearing land for the purpose of bringing it to a state of cultivation;
8. "ferret" means any of the domesticated forms of the old world polecat (*Putorius putorius*) used for hunting;
9. "fire-arm" includes an air or pellet gun and a long-bow and a cross-bow;

10. "fishing preserve" means an artificial or man-made body of water lying wholly within the boundaries of privately-owned land, containing water from surface run-off, natural springs, ground water or water diverted or pumped from a stream or lake but not being composed of natural streams, ponds or lakes or water impounded by the damming of natural streams and in which fish propagated under a licence or fish taken under a commercial fishing licence are released for angling purposes;
11. "fur-bearing animal" means a beaver, fisher, fox, lynx, marten, mink, muskrat, otter, raccoon, skunk, red squirrel, weasel, wolverine or any other animal that the Lieutenant Governor in Council declares to be a fur-bearing animal, and includes any part of such animal;
12. "game" means a game animal, game bird or fur-bearing animal, and includes any part of such animal;
13. "game animal" means any animal, except a fur-bearing animal, protected by this Act, and includes any part of such animal;
14. "game bird" means any bird protected by this Act or the *Migratory Birds Convention Act* (Canada), and includes any part of such bird;
15. "game bird hunting preserve" means any area in which pheasants or other game birds propagated under a licence are released for hunting purposes;
16. "holder of a licence" means the person named in the licence;
17. "hunting" includes chasing, pursuing, following after or on the trail of, searching for, shooting, shooting at, stalking or lying in wait for, worrying, molesting, taking or destroying any animal or bird, whether or not the animal or bird be then or subsequently captured, injured or killed, and "hunt", "hunted" and "hunter" have corresponding meanings;
18. "leg-hold trap" means a trap designed to capture an animal by seizing and holding the animal by the leg or foot;
19. "licence" means an instrument issued under this Act conferring upon the holder the privilege of doing

the things set forth in it, subject to the conditions, limitations and restrictions contained in it and in this Act and in the regulations, but no licence is or shall operate as a lease;

20. "Minister" means the Minister of Natural Resources;
21. "Ministry" means the Ministry of Natural Resources;
22. "non-resident" means a person who has not actually resided in Ontario for a period of at least seven months during the twelve months immediately preceding the time that his residence becomes material under this Act;
23. "officer" means a conservation officer or a deputy conservation officer and includes a member of the Royal Canadian Mounted Police Force, a member of a police force appointed under the *Police Act* and any other person authorized to enforce this Act; R.S.O. 1980, c. 381
24. "Ontario Fishery Regulations" means the Ontario Fishery Regulations made under the *Fisheries Act* (Canada); R.S.C. 1970, c. F-14
25. "open season" means a specified period during which specified game or fish may be taken;
26. "owner", with reference to land, includes any person who is the owner of an interest in land entitling him to the possession of it, but does not include the holder of a timber licence;
27. "pelt" means the untanned skin of a fur-bearing animal;
28. "pheasant" means any of the species *Phasianus colchicus* Linnaeus;
29. "power-boat" means any device that is capable of floating and to which is affixed a motor as a means of propulsion and includes any floating device towed by a power-boat;
30. "rabbit" includes cottontail rabbit, varying hare and European hare;
31. "regulations" means the regulations made under this Act;
32. "reptile" means any species of Reptilia that the Lieutenant Governor in Council declares to be a reptile and includes any part and the eggs of such species;
33. "resident" means a person who has actually resided in Ontario for a period of at least seven months during the

twelve months immediately preceding the time that his residence becomes material under this Act;

34. "snare" means a device for the taking of animals whereby they are caught in a noose, and "snaring" has a corresponding meaning;
35. "trap" means a spring trap, body-gripping trap, leg-hold trap, gin, deadfall, snare, box or net used to capture an animal, and "trapping" has a corresponding meaning;
36. "vehicle" means a vehicle that is drawn, propelled or driven by any kind of power, including muscular power, and includes the rolling stock of a railway;
37. "vessel" means a boat or ship, and includes a skiff, canoe, punt and raft;
38. "wolf" means any of the species *Canis lupus* L. or *Canis latrans* Say. R.S.O. 1970, c. 186, s. 1; 1971, c. 30, s. 1; 1972, c. 4, s. 12; 1973, c. 108, s. 1; 1980, c. 47, s. 1.

#### APPLICATION

Application  
of Act

**2.—(1)** This Act does not apply,

R.S.O. 1980,  
c. 181

(a) to domestic animals and domestic birds, except dogs, or, subject to subsection (2), fur-bearing animals kept on a fur farm as defined in the *Fur Farms Act*;

R.S.O. 1980,  
c. 138

(b) to a person taking or destroying any animal, other than a caribou, deer, elk or moose or an animal protected under the *Endangered Species Act*, by any means that do not cause unnecessary suffering and at any time on his own land where he finds such animal damaging or destroying his property or, on reasonable grounds, he believes such animal is about to damage or destroy his property;

(c) to a person destroying a beaver dam in defence or preservation of his property. R.S.O. 1970, c. 186, s. 2; 1971, c. 30, s. 2 (1); 1980, c. 47, s. 2 (1).

Idem

(2) This Act applies to fur-bearing animals kept on a fur farm as defined in the *Fur Farms Act*, in respect of offences against sections 67 and 69. 1971, c. 30, s. 2 (2).

Idem

(3) Notwithstanding subsection (1), this Act applies to domestic animals and to persons referred to in clause (1) (b) in respect of the restrictions in section 30 on the use of body-gripping traps and leg-hold traps. 1980, c. 47, s. 2 (2).

## ADMINISTRATION

3. The purpose of this Act is to provide for the management, perpetuation and rehabilitation of the wildlife resources in Ontario, and to establish and maintain a maximum wildlife population consistent with all other proper uses of lands and waters. R.S.O. 1970, c. 186, s. 3.

Purpose of the Act

4. The administration of this Act is under the control and direction of the Minister. R.S.O. 1970, c. 186, s. 4.

Administration of Act

5. Except as otherwise provided by this Act, all rentals, licence fees, fines, penalties, proceeds of the sale of game and fish and of all property forfeited, and other receipts, fees and revenues under this Act or the regulations, or under any licence or instrument authorized by or under this Act, shall be paid to the Treasurer of Ontario. R.S.O. 1970, c. 186, s. 5.

Revenue

6.—(1) Land may be acquired under the *Ministry of Government Services Act* for the purposes of management, perpetuation and rehabilitation of the wildlife resources in Ontario. R.S.O. 1970, c. 186, s. 6 (1); 1973, c. 2, s. 2.

Power to acquire lands under R.S.O. 1980, c. 279

(2) The Minister on behalf of Her Majesty in right of Ontario may receive and take from any person by grant, gift, devise, bequest or otherwise any property, real or personal, or any interest therein for the purposes mentioned in subsection (1). R.S.O. 1970, c. 186, s. 6 (2).

Idem

(3) The Minister or the Minister of Government Services may enter into agreements with the owners of lands respecting the management of the lands for the purposes mentioned in subsection (1), and such agreements may transfer to Her Majesty in right of Ontario the hunting and fishing rights in the lands and may authorize Her Majesty to carry out habitat improvement work, protective measures, stocking programs, fencing, erection of signs and any other management practice. R.S.O. 1970, c. 186, s. 6 (3); 1973, c. 2, s. 2.

Management agreements

(4) An agreement entered into under subsection (3) may be registered in the proper land registry office, and thereupon such agreement is binding upon every subsequent owner and mortgagee of the lands during the term of the agreement. R.S.O. 1970, c. 186, s. 6 (4).

Registration of agreements

7.—(1) The Minister may appoint conservation officers for carrying out this Act and the regulations. R.S.O. 1970, c. 186, s. 7 (1).

Appointment of conservation officers

Deputy  
conservation  
officers

(2) The Minister may appoint deputy conservation officers in and for any part of Ontario. 1980, c. 47, s. 3.

Termination  
of appoint-  
ments

(3) Every appointment under subsection (2) shall be for the period stated in the appointment. R.S.O. 1970, c. 186, s. 7 (3).

Search of  
vehicles,  
vessels, etc.

8.—(1) An officer may, without a search warrant,

- (a) stop, enter and search any aircraft, vehicle or vessel;
- (b) enter and search any fishing, hunting, mining, lumber or construction camp, or any office of any common carrier, or any premises where pelts are bought or sold; and
- (c) open and inspect any trunk, box, bag, parcel or receptacle,

if he has reasonable grounds to believe that any of them contains any game or fish killed, taken, shipped or had in possession in contravention of this Act or the regulations.

Search  
warrant

(2) An officer who has reasonable grounds to believe that it is necessary to enter any building, which by this Act he is not authorized to enter without a search warrant, shall make a deposition before a justice of the peace, and, where the justice is satisfied that there is reasonable ground for believing that there is in the building,

- (a) anything upon or in respect of which an offence against this Act or the regulations has been or is suspected to have been committed; or
- (b) anything that there is reasonable ground to believe will afford evidence as to the commission of any such offence,

he may at any time issue a search warrant.

Use of  
force

(3) An officer may use as much force as is necessary for him to exercise the powers conferred upon him by subsection (1) or in the execution of a search warrant issued under subsection (2). R.S.O. 1970, c. 186, s. 8.

Inspection of  
fire-arms

9. An officer may inspect any fire-arm in a locality in which game may be found or on any highway or road leading thereto or on waters adjacent thereto. R.S.O. 1970, c. 186, s. 9.

**10.** An officer on view may arrest without process any person found committing a contravention of this Act or of the regulations, in which case he shall bring him with reasonable diligence before a competent court to be dealt with according to law. R.S.O. 1970, c. 186, s. 10.

Arrest  
on view

**11.** An officer in the discharge of his duties and any person by him accompanied or authorized for the purpose may enter upon and pass through or over private lands without being liable for trespass. R.S.O. 1970, c. 186, s. 11.

Entry upon  
private  
property

**12.—(1)** An officer shall investigate all contraventions of this Act and the regulations brought to his notice and may prosecute any person who he has reasonable cause to believe is guilty of an offence against this Act.

Authority  
to prosecute

(2) Subsection (1) does not apply to contraventions of subsection 18 (1). R.S.O. 1970, c. 186, s. 12.

Where  
subs. (1) not  
to apply

**13.** No person shall obstruct, hinder or delay or interfere with an officer in the discharge of his duty by violence or threats or by giving false information, or in any other manner. R.S.O. 1970, c. 186, s. 13.

Obstructing  
officers

**14.** An officer may stop a vehicle or vessel for the purpose of,

Authority  
to stop  
vehicles,  
vessels

(a) determining whether the occupants of the vehicle or vessel have been hunting or fishing; or

(b) obtaining information as to the number and species of game or fish taken. R.S.O. 1970, c. 186, s. 14.

**15.** No person shall refuse to allow an officer to examine any book, invoice or document containing any entry or memorandum relating to game or fish that the officer suspects of being taken or possessed in contravention of this Act or the regulations, and he shall afford every reasonable facility for the examination, and, upon refusal, the officer may, without a search warrant, break any lock or fastening that may be necessary in order to conduct the examination and remove any such book, invoice or document to safekeeping. R.S.O. 1970, c. 186, s. 15.

Power of  
inspection of  
documents  
by officers

**16.—(1)** An officer may, without a warrant, seize any vessel, vehicle, aircraft, implement, appliance, material, container, goods, equipment, game or fish where the officer on reasonable grounds believes that,

Seizure of  
aircraft, etc.

(a) the vessel, vehicle, aircraft, implement, appliance, material, container, goods or equipment has been used in

connection with the commission of an offence against this Act;

(b) the game or fish or any part thereof has been hunted, taken, killed, transported, bought, sold or had in possession contrary to any provision of this Act or the regulations; or

(c) the game or fish or part thereof has been intermixed with any game or fish referred to in clause (b).

Custody of  
property  
seized

(2) Subject to subsections (4), (5) and (6), any thing seized under subsection (1) shall be delivered into the custody of such person as the Minister directs for safekeeping pending the conclusion of any investigation or the disposition by a court of any charge laid as a result of the investigation.

Disposition  
of property  
seized where  
no charges  
are laid, etc.

(3) Where,

(a) no charge is laid at the conclusion of an investigation; or

(b) any charge that has been laid is withdrawn or dismissed,

any thing seized under subsection (1), other than game or fish that has been disposed of under subsection (4), shall be returned to the person from whom it was seized or to his personal representative.

Disposition  
of perishable  
property  
seized

(4) Where, in the opinion of the person having custody of any game or fish seized under subsection (1), such game or fish will rot, spoil or otherwise perish, that person may dispose of the game or fish by donation to any charitable organization.

Disposition  
of property  
seized

(5) Where the ownership of any implement, appliance, material, container, goods, equipment, game or fish seized under subsection (1) cannot, at the time of seizure, be ascertained, such implement, appliance, material, container, goods, equipment, game or fish is, upon the seizure thereof, forfeited to the Crown in right of Ontario as represented by the Minister and may be disposed of as the Minister directs.

Forfeiture  
of property  
seized

(6) Where a person is convicted of an offence against this Act, the court, in addition to any fine imposed, may order that any vessel, vehicle, aircraft, implement, appliance, material, container, goods, equipment, game or fish seized under subsection (1) be forfeited, and upon such order being made, such vessel, vehicle, aircraft, implement, appliance, material, container, goods, equipment, game or fish ordered to be forfeited is forfeited to the Crown in right of Ontario as represented by the Minister and may be disposed of as the Minister directs. 1980, c. 47, s. 4.

## GENERAL PROVISIONS

**17.**—(1) Except with the written authority of the Minister and subject to such terms and conditions as he may impose, no person shall, Hunting or trapping for hire

- (a) hunt for hire, gain or reward, or hope thereof, or employ, hire or, for valuable consideration, induce any other person to hunt; or
- (b) trap for hire, gain or reward, or hope thereof, or employ, hire or, for valuable consideration, induce any other person to trap.

(2) Clause (1) (b) does not apply to the holder of a licence to hunt or trap fur-bearing animals or a person who is nominated by the holder of the licence in accordance with the regulations to trap in his stead. Exception 1980, c. 47, s. 5.

**18.**—(1) No person shall hunt or fish or with any gun or sporting implement, fishing rod or tackle in his possession go upon any enclosed or unenclosed land or water after he has had oral or written notice not to hunt or fish thereon by the owner or by a person authorized by the owner to give such notice. Entry after notice

(2) No person shall,

- (a) without authority give or cause to be given the notice mentioned in subsection (1); or
- (b) tear down, remove, deface, damage or interfere with any notice put up, posted or placed pursuant to subsection (1).

Wrongful erection or destruction of notices

(3) No person shall, for the purpose of hunting or fishing, enter into or allow a dog to enter into growing or standing grain or any other crop, whether of one kind or not, without the permission of the owner or a person authorized by the owner to give such permission. Growing crops

(4) No person in a party of more than twelve persons shall hunt or with any gun or sporting implement enter upon any enclosed or unenclosed land in a county without the permission of the owner or a person authorized by the owner to give such permission. Hunting in parties exceeding twelve R.S.O. 1970, c. 186, s. 18 (1-4).

(5) No person shall enter or attempt to enter upon lands owned by the Crown that are used for the purpose of propagating or retaining game or fish without, Entry on Crown lands used for propagating or retaining game or fish

- (a) authority; or

(b) paying the fee prescribed by the regulations. 1973, c. 108, s. 2 (1).

Destruction  
of notices  
or signs

(6) No person shall tear down, remove, damage, deface or interfere with any notice or sign of the Ministry put up, posted or placed for the purposes of this Act. R.S.O. 1970, c. 186, s. 18 (6); 1972, c. 1, s. 1.

Common  
law remedy  
for trespass

(7) Nothing in this section limits or in any way affects the remedy at common law of an owner for trespass.

Right of  
apprehension

(8) Every person found contravening any provision of this section may be apprehended without warrant by a constable or by the owner of the land on which the contravention takes place, or by the servant of or by any person authorized by such owner, and be taken forthwith to a justice of the peace to be dealt with according to law. R.S.O. 1970, c. 186, s. 18 (7, 8).

Copy of  
Minister's  
letter to  
be evidence

(9) A copy of a letter purporting to be signed by the Minister authorizing any person to give the notice referred to in subsection (1) in respect of any land owned by the Crown is *prima facie* evidence of such letter and of the contents thereof. 1973, c. 108, s. 2 (2).

Hunting and  
fishing on  
railway  
lands

(10) Except in accordance with a system established or approved by the Lieutenant Governor in Council, no patentee of railway lands and no owner or tenant who is a subsidiary of or affiliated with a patentee of railway lands shall charge any fee for the use of his railway lands for the purpose of hunting or fishing, and no such patentee, owner or tenant shall prohibit any person from hunting or fishing on such railway lands.

Interpre-  
tation

(11) In this section, "railway lands" includes all lands heretofore or hereafter set apart under any general or special Act of the Legislature as a land subsidy or otherwise in aid of any railway or of any works in connection therewith or of any works to be established, maintained or carried on by any railway. 1980, c. 10, s. 2 (1).

Offence of  
hunting  
carelessly

**19.** Every person is guilty of the offence of hunting carelessly who, being in possession of a fire-arm for the purpose of hunting, discharges or causes to be discharged or handles such fire-arm without due care and attention or without reasonable consideration for persons or property and is liable to a fine of not more than \$5,000, or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 186, s. 19; 1980, c. 47, s. 6.

Use of  
aircraft

**20.—(1)** Except as provided in the regulations, no person shall use an aircraft while hunting.

(2) No person shall use a vehicle or vessel for the purpose of chasing, pursuing, worrying, molesting, killing, injuring or destroying any animal or bird. Use of vehicles and vessels

(3) Subsection (2) does not apply to a farmer in the defence or preservation of his property or to a party of farmers in the defence or preservation of the property of one or more of them. R.S.O. 1970, c. 186, s. 20. Exception

**21.**—(1) No person, while engaged in hunting or trapping game or while going to or returning from a hunting camp or locality in which game may be found, shall, Fire-arms in game areas

(a) have a loaded fire-arm in or on, or discharge a loaded fire-arm from, an aircraft or a vehicle; or

(b) in any county, or any regional municipality that consists of lands that were formerly in a county, designated in the regulations, discharge a fire-arm from or across a highway, road, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, used or intended for use by the public for the passage of vehicles; or

(c) in any part of Ontario that is not in a county or regional municipality designated in the regulations, discharge a fire-arm from or across the travelled portion of a highway, road, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, used or intended for use by the public for the passage of vehicles. R.S.O. 1970, c. 186, s. 21 (1), *revised*.

(2) Except as otherwise provided in the *Migratory Birds Convention Act* (Canada) or the regulations made under that Act, no person shall have a loaded fire-arm in or on or discharge the same from a power-boat. R.S.O. 1970, c. 186, s. 21 (2). Fire-arms in power-boats  
R.S.C. 1970, c. M-12

(3) Notwithstanding clause (1) (a) and subsection (2), if the Minister is satisfied that the holder of licence to hunt is incapable of walking and is thereby required to use a wheelchair or other similar means of locomotion, he may in writing authorize that person to have a loaded fire-arm in or on, and to discharge a loaded fire-arm from, a vehicle or power-boat that is not in motion. 1980, c. 47, s. 7. Hunting from a stationary vehicle or power-boat

(4) A fire-arm having an unfired shell or cartridge in the chamber or in a magazine attached to the fire-arm shall be deemed to be loaded within the meaning of this section. R.S.O. 1970, c. 186, s. 21 (3). Interpretation

**22.**—(1) In a locality that game usually inhabits or in which game is usually found, no person shall have a fire-arm Prohibition as to guns

in his possession, unless it is unloaded and encased, between one-half hour after sunset and one-half hour before sunrise of any day.

**Night  
hunting**

(2) No person shall hunt any animal or bird between one-half hour after sunset and one-half hour before sunrise of any day.

**Devices  
capable of  
throwing or  
casting rays  
of light**

(3) No person shall use, while hunting, any device capable of throwing or casting rays of light on any object. R.S.O. 1970, c. 186, s. 23.

**Exception,  
raccoon  
hunting**

**23.** Subject to section 21 and notwithstanding section 22, the holder of a licence to hunt raccoon at night may possess or use a fire-arm of a calibre or type prescribed in the regulations and a light for the purpose of hunting raccoon during the open season therefor when accompanied by a dog licensed therefor, provided that no person, while so hunting, shall use a light that is attached to a vehicle or is shone from or in a vehicle. 1980, c. 47, s. 8.

**Interpre-  
tation**

**24.**—(1) In this section, “chase” includes pursuing, following after and searching for but does not include taking or capturing, shooting at or shooting.

**Licence  
to chase  
raccoon**

(2) The holder of a licence to chase raccoon at night may chase raccoon at night during such times and upon such terms and conditions as are prescribed in the regulations.

**Licence to  
chase fox,  
etc.**

(3) The holder of a licence to chase fox, coyote or wolf may chase fox, coyote or wolf, as the case may be, during the day or night at such times and upon such terms and conditions as are prescribed in the regulations. 1980, c. 47, s. 9, *part*.

**Automatic  
shot-guns**

**25.** No person shall hunt any animal or bird with a repeating, automatic or auto-loading shot-gun that has not been permanently plugged or altered so that it is incapable of holding a total of more than three shells at one time in the chamber and magazine. R.S.O. 1970, c. 186, s. 25.

**Hunting,  
etc., in  
provincial  
parks**

**26.**—(1) Except as provided in the regulations, no person shall hunt, trap or possess, or attempt to trap, any animal or bird in a provincial park or in a Crown game preserve.

**Weapons in  
provincial  
parks**

(2) Except as provided in the regulations, no person shall possess in a provincial park or in a Crown game preserve any trap, explosive, gun or sporting implement. R.S.O. 1970, c. 186, s. 26.

**Poison  
prohibited**

**27.** Except as provided in the regulations, no person shall take or kill or attempt to take or kill any animal by means of poison. R.S.O. 1970, c. 186, s. 27.

**28.** Except as provided in the regulations, no person shall use a ferret in hunting game animals. R.S.O. 1970, c. 186, s. 28. Ferrets

**29.** No person shall use a set-gun in hunting game. R.S.O. 1970, c. 186, s. 29. Set-guns

**30.—(1)** In this section, “animal” includes any domestic, fur-bearing or game animal. Interpretation

(2) No person shall trap or attempt to trap any animal by means of a body-gripping trap or leg-hold trap. Prohibition

(3) Subsection (2) does not apply, Exceptions

(a) to a person who holds a licence to hunt or trap fur-bearing animals;

(b) to a farmer who uses a body-gripping trap or leg-hold trap on his own lands in defence or preservation of his property or in circumstances referred to in subsection 62 (7);

(c) to a person who uses a body-gripping trap or leg-hold trap designated by the Minister as a humane trap.

(4) The Minister may, with the approval of the Lieutenant Governor in Council, make an order designating areas or municipalities in Ontario in which the prohibition set out in subsection (2) does not apply. Minister may make order

(5) The Minister may, with the approval of the Lieutenant Governor in Council, make an order designating any body-gripping trap or leg-hold trap as a humane trap for the purpose of clause (3) (c). 1980, c. 47, s. 9, *part*. Idem

**31.** No person who has taken or killed an animal, bird or fish suitable for food shall allow the flesh to be destroyed or spoiled. R.S.O. 1970, c. 186, s. 30. Flesh not to be wasted

**32.—(1)** Without the written authority of the Minister, no person shall release any animal or bird imported into Ontario or propagated from stock imported into Ontario. Release of imported stock

(2) No person shall permit any animal or bird imported into Ontario or propagated from stock imported into Ontario to escape. R.S.O. 1970, c. 186, s. 31. Control of imported stock

**33.** Nothing in this Act prevents the bringing of game into Ontario from a place outside Ontario or the possession in Ontario of game taken outside Ontario if the game was legally taken. R.S.O. 1970, c. 186, s. 32. Importation of game

Hotels,  
restaurants,  
etc.

**34.** Except with the written authority of the Minister, no construction camp, lumber camp, mining camp, hotel, restaurant, boarding-house or other commercial premises shall mention on a bill of fare or serve any game, other than game that has been propagated or sold under a licence. R.S.O. 1970, c. 186, s. 33.

Offence to  
make false  
statement

**35.** Any person who knowingly makes any false statement in any application, statement under oath, report or return required by this Act or the regulations is, in addition to any other penalty for which he may be liable, guilty of an offence against this Act. R.S.O. 1970, c. 186, s. 34.

#### LICENCES

Licences

**36.** Except under the authority of a licence, no person shall hunt or trap or attempt to trap animals or birds. R.S.O. 1970, c. 186, s. 35.

Contraven-  
tion of  
terms, etc.

**37.**—(1) No person shall contravene the terms or conditions of his licence.

Transfer of  
licence,  
coupon or  
seal

(2) Except as provided in the regulations, no licence shall be transferred and no person shall buy, sell, exchange or in any way be a party to the transfer of a licence, coupon or seal, or in any way use or attempt to use a licence, coupon or seal issued to any other person. R.S.O. 1970, c. 186, s. 36 (1, 2).

Issue of  
certain  
licences

(3) Any person who applies in accordance with this Act and the regulations for,

(a) an angling licence;

(b) a licence to hunt game; or

(c) a licence referred to in section 79,

and who meets the requirements of this Act and the regulations and who pays the prescribed fee is entitled to be issued the licence. 1973, c. 108, s. 4 (1).

Refund  
of fees

(4) The Minister may direct the refund of the fee paid for any licence where, owing to the licence not having been used by reason of sickness, accident or death, he considers it just, and the Treasurer of Ontario, upon the written request of the Minister, shall cause the refund to be made.

Cancellation  
of licence  
in event  
of error

(5) The Minister may cancel any licence where an error has been made from any cause when issuing it, and the

holder has no claim for indemnity or compensation with respect to it other than the adjustment or refund of any fee collected.

(6) Except as provided in the regulations, no holder of a licence shall hunt game unless at that time he has the licence on his person. Licence to be carried

(7) The holder of a licence shall produce and show it to any officer whenever requested by the officer. R.S.O. 1970, c. 186, s. 36 (4-7). Production of licence on demand

(8) The holder of a licence of a class designated in the regulations shall, while hunting in such parts of Ontario as are prescribed in the regulations, wear in a conspicuous place on his person a badge furnished by the Ministry clearly showing the number of the licence. 1980, c. 47, s. 10. Wearing of badge

(9) The holder of a licence obtained by any false or misleading statement made in respect of any information required for the issue of the licence shall be deemed to be the holder of a void licence and the holder may be prosecuted under this Act in the same manner and with the same effect as he could be prosecuted if he were not the holder of a licence. R.S.O. 1970, c. 186, s. 36 (9). Licence obtained by misrepresentation

**38.**—(1) The Game and Fish Hearing Board is continued and shall be composed of not more than five members who shall be appointed by the Lieutenant Governor in Council, who shall hold office during pleasure and none of whom shall be members of the public service in the employ of the Ministry. Game and Fish Hearing Board

(2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman. Chairman

(3) Three members of the Board constitute a quorum. Quorum

(4) The members of the Board shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines. 1973, c. 108, s. 5, *part.* Remuneration

**39.**—(1) In this section and in sections 40 and 41, "licence" means a licence other than a licence referred to in subsection 37 (3). Interpretation

(2) An issuer of licences may refuse to issue a licence where the refusal is reasonably necessary for the achievement of the purpose of this Act. Refusal of licence

(3) Where an issuer of licences refuses to issue a licence he shall serve notice of the refusal on the applicant for the licence. 1973, c. 108, s. 5, *part.* Notice of refusal

Power of  
Minister

40.—(1) The Minister may cancel a licence where the continued existence of the licence is not in accordance with the purpose of this Act.

Notice of  
proposal  
to cancel  
licence

(2) Where the Minister proposes to cancel a licence under this Act, he shall serve or cause to be served notice of his proposal, together with written reasons therefor, on the holder of the licence. 1973, c. 108, s. 5, *part*.

Refund  
of fees

(3) The Minister may direct the refund, in whole or in part, of the fee paid for any licence that has been cancelled under this Act. 1980, c. 47, s. 11.

Notice  
requiring  
hearing

41.—(1) A notice under section 39 or 40 shall inform the applicant or holder of the licence that he is entitled to a hearing by the Board if he mails or delivers to the Minister and to the Board, within fifteen days after the notice under section 39 or 40 is served on him, notice in writing requiring a hearing by the Board, and he may so require such a hearing.

Holding  
of hearing

(2) Where an applicant or holder of the licence requires a hearing by the Board in accordance with subsection (1), the Board shall appoint a time for and hold the hearing and shall report thereon to the Minister.

Report

(3) The report of the Board shall contain a summary of the facts presented at the hearing and its opinion on the merits of the issuing or cancellation of the licence, as the case may be, in light of the facts and in view of the purpose of this Act, together with its reasons for its opinion.

Powers of  
Minister

(4) The Minister, after receiving and considering the report of the Board, may direct or refuse to direct the issuance of the licence or may carry out or refrain from carrying out his proposal to cancel the licence, as the case may be.

Parties

(5) The applicant or holder of the licence who has required the hearing and such other persons as the Board may specify are parties to the hearing.

Minister  
entitled to  
be heard

(6) The Minister is entitled to be heard, by counsel or otherwise, upon a hearing under this section.

Application  
of  
R.S.O. 1980,  
c. 484

(7) Sections 6 to 16 and 21 to 23 of the *Statutory Powers Procedure Act* apply with respect to a hearing under this section.

Extension  
of time for  
requiring  
hearing

(8) The Board may extend the time for the giving of notice requiring a hearing by an applicant or holder of the licence under this section either before or after expiration of such time where it is satisfied that there are

*prima facie* grounds for granting relief to the applicant or holder of the licence and that there are reasonable grounds for applying for the extension and the Board may give such directions as it considers proper consequent upon the extension.

(9) An applicant or holder of the licence who is a party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing. Examination of documentary evidence

(10) Notice of a hearing under this section shall afford to the holder of the licence a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the retention of the licence. Notice of hearing

(11) Any notice required by section 39 or 40 to be served may be served personally or by registered mail addressed to the person upon whom notice is to be served at his latest known address, and where notice is served by registered mail it shall be deemed to be served on the fifth day after the day of mailing unless the person on whom notice is to be served establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. 1973, c. 108, s. 5, *part*. Service of notice

42. Except as provided in the regulations, no licence shall be issued to any person under the age of sixteen years. R.S.O. 1970, c. 186, s. 37. Minors

43.—(1) No person shall issue any licence or collect any fee in respect thereof unless authorized by the Minister. Issuers of licences

(2) The Minister may authorize any person to issue licences, and such issuers of licences shall have the powers and duties prescribed by the manual of licence-issuing instructions authorized by the Minister. Idem

(3) Every issuer of licences shall be deemed to be a trustee of the Crown of the licence fees collected by him or on his behalf. Licence issuers as trustees

(4) Every issuer of licences shall comply with the manual of licence-issuing instructions, and, if he fails so to do, he is guilty of an offence against this Act. Duties, etc., of licensees

(5) No person shall possess a licence that does not exhibit the name of the holder or that is ante-dated or undated or a material part of which is not completed. R.S.O. 1970, c. 186, s. 38. Licence in blank

Municipal  
licences  
to hunt  
pheasants,  
etc.

44.—(1) Subject to subsection (5), the Minister may in writing authorize any municipality to pass by-laws for issuing and fixing the maximum number of licences to hunt, during the open season, pheasants, rabbits and foxes and for charging such fees therefor as he authorizes, and the Minister may fix the minimum number of such licences that the by-law shall provide for. 1973, c. 108, s. 6 (1).

Where  
municipal  
licence  
required

(2) Where a municipality has passed a by-law under subsection (1), no person shall hunt pheasants, rabbits or foxes in the municipality during the open season without a licence from the municipality.

Validity of  
licence

R.S.C. 1970,  
c. M-12

(3) Where a municipality has passed a by-law under subsection (1), the Minister may in writing authorize the municipality to pass a further by-law to provide that a licence to hunt animals and birds not protected by this Act or the regulations or the *Migratory Birds Convention Act* (Canada) or the regulations made under that Act, during the period between the 1st day of March and the 31st day of August, is not valid in that municipality unless it is signed by the clerk of the municipality or by a person authorized by him.

Repeal of  
by-laws

(4) The Minister may in writing authorize the repeal of a by-law passed under subsection (1), and the repealing by-law may provide for the refund, in whole or in part, of licence fees paid for licences issued under the repealed by-law. R.S.O. 1970, c. 186, s. 39 (2-4).

Minister  
may limit  
his  
authority  
territorially

(5) The Minister may in his written authority referred to in subsection (1) exempt from the operation of subsection (1) any land of the Crown situate within the municipality or any land within the municipality, the owner of which has entered into an agreement under section 6, respecting such land. 1973, c. 108, s. 6 (2).

Interpre-  
tation

45.—(1) In this section, "guide" means a person who for reward carries out the customary duties of a hunting or angling guide.

Guides

(2) Except under the authority of a licence, no person shall act as a guide in any part of Ontario designated in the regulations.

Employment  
of guides

(3) In any part of Ontario designated as an area in which no person shall act as a guide except under the authority of a licence, no person shall employ as a guide a person who is not the holder of a guide's licence.

(4) The holder of a guide's licence shall not act as a guide for any person for any purpose for which that person is required to have a licence under this Act or the Ontario Fishery Regulations unless that person is the holder of a licence for the purpose. R.S.O. 1970, c. 186, s. 40 (1-4). Limitation of guides

(5) No non-resident shall hunt deer, elk or moose in any part of Ontario designated in the regulations without employing or being accompanied by a licensed guide, but, where two or more non-residents hunt together, the number of guides employed need not be more than one guide for each two non-residents. R.S.O. 1970, c. 186, s. 40 (5); 1980, c. 47, s. 12. Guides for non-resident hunters

#### ILLEGAL POSSESSION OF GAME

**46.** No person shall knowingly possess any game hunted in contravention of this Act or the regulations. R.S.O. 1970, c. 186, s. 41. Possession of game

#### GAME ANIMALS

**47.**—(1) Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as are prescribed in the regulations, no person shall hunt black bear, polar bear, caribou, deer, elk or moose. R.S.O. 1970, c. 186, s. 42 (1); 1980, c. 47, s. 13 (1). Open seasons

(2) Except as provided in the regulations, no person shall be the holder of more than one licence to hunt caribou, deer, elk or moose in any year. R.S.O. 1970, c. 186, s. 42 (2); 1980, c. 47, s. 13 (2). Multiplicity of licences

**48.**—(1) No person shall take or kill a black bear, polar bear, caribou, deer, elk or moose by means of a trap, net, baited line or other similar contrivance or set any of them for any such animal. R.S.O. 1970, c. 186, s. 44 (1); 1980, c. 47, s. 14. Traps, nets, snares, etc., prohibited

(2) Notwithstanding subsection (1), black bear may be trapped during such times and subject to such terms and conditions as are prescribed in the regulations. R.S.O. 1970, c. 186, s. 44 (2). Exception

**49.** No person shall hunt a caribou, deer, elk or moose while it is swimming. R.S.O. 1970, c. 186, s. 45; 1980, c. 47, s. 15. Swimming caribou, deer, elk or moose

**50.** Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as the Minister prescribes, no person shall hunt or trap or attempt to trap any rabbit or any black, grey or fox squirrel. R.S.O. 1970, c. 186, s. 46. Hunting, trapping, etc.

**51.**—(1) Except under the authority of a licence and subject to the regulations, no person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter of a game animal or possess a game animal for sale. R.S.O. 1970, c. 186, s. 47 (1). Licence for sale of game animal

Licence to  
propagate  
game animal

(2) Except under the authority of a licence and subject to the regulations, no person shall propagate a game animal or possess a game animal for propagation. 1980, c. 47, s. 16.

Taking of  
game animal

**52.** Except with the written authority of the Minister and subject to such terms and conditions as he may impose, no person shall take a game animal by any means for educational or scientific purposes. 1980, c. 47, s. 17.

Dealing in  
bear meat

**53.** Notwithstanding anything in this Act, any person may under the authority of a licence sell the meat of a bear if taken lawfully, and any person may without a licence possess or buy any bear meat for his own use. R.S.O. 1970, c. 186, s. 49.

#### GAME BIRDS

Grouse,  
partridge,  
etc.

**54.** Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as are prescribed in the regulations, no person shall hunt ruffed grouse, spruce grouse, Hungarian partridge, pheasant, sharp-tailed grouse, greater prairie-chicken, ptarmigan, bob-white quail or wild turkey. R.S.O. 1970, c. 186, s. 50.

Hunting  
birds

**55.** No person shall hunt any game bird during the closed season or any other bird at any time, except crows, cowbirds, blackbirds, starlings, house-sparrows and birds, other than pheasants or Hungarian partridge, released under section 32. R.S.O. 1970, c. 186, s. 51.

Traps and  
snares  
prohibited

**56.** No person shall use, set or maintain a net, trap, spring, cage or other similar contrivance for the purpose of taking or killing any game bird. R.S.O. 1970, c. 186, s. 52.

Use of rifle  
to hunt  
pheasant  
prohibited

**57.** No person shall hunt pheasant with a rifle. R.S.O. 1970, c. 186, s. 53.

Licence for  
propagation,  
etc., of  
game birds

**58.** Except under the authority of a licence and subject to the regulations, no person shall propagate or sell a game bird or possess a game bird for propagation or sale. R.S.O. 1970, c. 186, s. 54.

Game bird  
hunting  
preserves

**59.—(1)** Except under the authority of a licence and subject to the regulations, no person shall own or operate a game bird hunting preserve.

Exception

(2) Subsection (1) does not apply to a person or a game bird hunting preserve exempted under the regulations. R.S.O. 1970, c. 186, s. 55.

Birds  
protected

**60.—(1)** Except with the written authority of the Minister and subject to such terms and conditions as he may impose, no person

shall take a game bird by any means for educational or scientific purposes.

(2) No person shall take, destroy or possess the eggs or nests of any game bird, except with the written authority of the Minister to take, destroy or possess the eggs or nests for educational or scientific purposes. 1980, c. 47, s. 18. Eggs and nests protected

#### FUR-BEARING ANIMALS

**61.** Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as the Minister prescribes, no person shall hunt or trap or attempt to trap any fur-bearing animal. R.S.O. 1970, c. 186, s. 57. Hunting, trapping, etc.

**62.**—(1) The Minister may, in a licence to hunt or trap fur-bearing animals, Licence to trap

(a) fix the number of each species of fur-bearing animal that may be taken thereunder; and

(b) designate the area in which fur-bearing animals may be taken thereunder by the holder of the licence.

(2) The Minister may limit the number of licences to hunt or trap fur-bearing animals in any area. Idem

(3) No non-resident shall be the holder of a licence to hunt or trap fur-bearing animals. R.S.O. 1970, c. 186, s. 58 (1-3). Non-residents

(4) Notwithstanding anything in this Act, no person shall sell, offer for sale, purchase or barter a live fur-bearing animal or live wolf, except with the written authority of the Minister and subject to the regulations. Sale of fur-bearing animals restricted

(5) The holder of a licence to hunt or trap fur-bearing animals may sell the carcass or any part thereof, including the pelt, of any fur-bearing animal taken by him under that licence. 1980, c. 47, s. 19 (1). Authority to sell

(6) Subject to sections 26 and 44, the holder of a licence to hunt or trap fur-bearing animals may, under the authority of that licence and without any other licence, hunt, in the area described in the licence during the open seasons between the 15th day of October and the 30th day of June in the year next following, any bird or animal, other than caribou, deer, elk or moose. R.S.O. 1970, c. 186, s. 58 (5); 1980, c. 47, s. 19 (2). Exceptions as to trappers

(7) A farmer or any member of his family residing with him upon his lands may, without a licence, hunt or trap thereon fur-bearing animals during the open seasons and may hunt thereon birds or animals, other than caribou, deer, elk or moose, during the open seasons. Exceptions as to farmer

Authority  
to sell  
limited

(8) Except under the authority of a licence and subject to this Act and the regulations, no farmer and no member of his family residing with him upon his lands shall sell the carcass or any part thereof, including the pelt, of any fur-bearing animal taken by him under the provisions of subsection (7). 1980, c. 47, s. 19 (3).

Interference  
with traps

**63.** No person shall touch or interfere with any set trap, unless authorized so to do by law or by the owner thereof. R.S.O. 1970, c. 186, s. 59.

Possession  
of fur-  
bearing  
animals in  
closed  
season

**64.** Except as provided in the regulations, no person shall during the closed season have in his possession or in that of his servant or agent, or in that of any other person on his behalf, any fur-bearing animal wherever killed,

(a) except that a pelt of an animal killed in Ontario may be possessed during the closed season under a licence if applied for within ten days after the end of the open season in which it was killed, but this clause does not apply to the pelt of a fur-bearing animal that has been sealed or marked in accordance with this Act; and

(b) except that a pelt of an animal killed outside Ontario may be possessed during the closed season under a licence if applied for within forty-eight hours after the pelt is received. R.S.O. 1970, c. 186, s. 61; 1971, c. 30, s. 3; 1980, c. 47, s. 21.

Licences:

**65.**—(1) Except under the authority of a licence, no person shall,

fur tanner's

(a) engage in or carry on, or be concerned in, the tanning, plucking or treating of pelts;

fur  
dealer's

(b) engage in or carry on, or be concerned in, the trading, buying or selling of pelts; or

possession  
of pelts

(c) possess any pelt. R.S.O. 1970, c. 186, s. 62 (1); 1980, c. 47, s. 22.

Trade only  
between  
licensed fur  
dealers

(2) No holder of a licence under clause (1) (b) shall sell, trade or barter, or be concerned in the selling, trading or bartering, of pelts to or with any other person in Ontario, except where that other person holds a licence under clause (1) (b). R.S.O. 1970, c. 186, s. 62 (2).

Sealing or  
marking of  
pelts

**66.**—(1) The pelt of any fur-bearing animal, other than a muskrat, shall be sealed or marked by a duly authorized person before sale, and no person licensed under clause 65 (1) (b) or (c) shall have the unsealed or unmarked pelt of any fur-bearing animal, other than a muskrat, in his possession.

(2) No person shall present or permit to be presented for sealing <sup>Offence</sup> or marking the pelt of any fur-bearing animal required to be sealed under subsection (1) that was not taken by him under the authority of his licence to hunt or trap fur-bearing animals or under subsection 62 (7).

(3) No person shall be party to having or attempting to have <sup>Idem</sup> sealed or marked the pelt of any fur-bearing animal that was not taken under the authority of the licence that is presented with the pelt. 1980, c. 47, s. 23.

**67.** Except with the written authority of the Minister and sub- <sup>Hunting and trapping of fur-bearing animals restricted</sup>ject to such terms and conditions as he may impose, no person shall hunt or trap or attempt to trap a fur-bearing animal in the wild state for,

(a) the purpose of transfer to a fur farm as defined in the *Fur Farms Act*; or <sup>R.S.O. 1980, c. 181</sup>

(b) educational or scientific purposes. 1980, c. 47, s. 24.

**68.** Subject to section 2 and except under the authority <sup>Dens of fur-bearing animals</sup> of a licence to hunt or trap fur-bearing animals, no person shall molest, damage or destroy,

(a) a den or usual place of habitation of a fur-bearing animal, other than that of a fox or skunk; or

(b) a beaver dam. R.S.O. 1970, c. 186, s. 65.

**69.—**(1) No person shall take or ship or attempt to take or ship <sup>Royalties payable</sup> to a point outside Ontario any fur-bearing animal or its pelt without a licence and without paying the royalty prescribed in the regulations. R.S.O. 1970, c. 186, s. 66 (1).

(2) No person shall take or ship or attempt to take or ship <sup>Idem</sup> to a fur farm as defined in the *Fur Farms Act* any fur-bearing animal taken under section 67 without paying the royalty prescribed by the regulations. 1971, c. 30, s. 7.

(3) No person shall send or have sent any fur-bearing animal <sup>Idem</sup> or its pelt to a tanner or taxidermist to be tanned, plucked or treated in any way without a licence and without paying the royalty prescribed in the regulations. R.S.O. 1970, c. 186, s. 66 (2).

**70.** No person who has taken or killed a fur-bearing animal <sup>Pelts not to be destroyed</sup> shall allow the pelt to be destroyed or spoiled. R.S.O. 1970, c. 186, s. 67.

**71.** Notwithstanding anything in this Act, any person may <sup>Dealing in muskrat, etc.</sup> under the authority of a licence sell the meat of a beaver,

muskrat or raccoon if taken lawfully, and any person may without a licence possess or buy any such meat for his own use. R.S.O. 1970, c. 186, s. 68.

## FISH

No traffic  
in certain  
fish

**72.**—(1) No person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter, of an Atlantic salmon (also known as ouananiche) taken from Ontario waters, a smallmouth bass, largemouth bass, maskinonge, brook trout, brown trout, rainbow trout or Aurora trout, or any part thereof, including the eggs thereof, but subject to such terms and conditions as are prescribed by the regulations,

- (a) under the authority of a licence to propagate and sell bass and trout, a sale may be made of smallmouth bass, largemouth bass, brook trout or rainbow trout propagated in Ontario for the purpose of stocking and of brook trout and rainbow trout for human consumption; and
- (b) under the authority of a licence to sell trout, a sale may be made for human consumption of,
  - (i) brook trout and rainbow trout taken from waters outside Ontario,
  - (ii) live brook trout and rainbow trout propagated in Ontario and offered for sale in a restaurant or a retail shop, or
  - (iii) surplus stocks of brook trout and rainbow trout held under a fishing preserve licence. 1973, c. 108, s. 8; 1980, c. 47, s. 25 (1).

Idem

(2) No person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter, of yellow pickerel (also known as pike-perch, walleye, dore or blue pickerel) pike, lake trout, sturgeon or sauger, or any part thereof, taken from Ontario waters by angling or taken in any other manner by a person who is not the holder of a commercial fishing licence. 1980, c. 47, s. 25 (2).

Idem

(3) No person shall buy, sell or possess a fish or part of a fish, including the eggs thereof, taken from Ontario waters during the closed season for that fish. R.S.O. 1970, c. 186, s. 69 (3); 1980, c. 47, s. 25 (3).

Fishing  
preserves

**73.**—(1) Except under the authority of a licence and subject to the regulations, no person shall own or operate a fishing preserve.

Exception

(2) Subsection (1) does not apply to a person or a fishing preserve exempted under the regulations. R.S.O. 1970, c. 186, s. 70.

**74.**—(1) Except under the authority of a licence, no person shall possess a gill, hoop, pound, seine, trap or trawl net. Fish nets, possession

(2) No person shall sell a gill, hoop, pound, seine, trap or trawl net to any person not the holder of a commercial fishing licence or a licence under subsection (1). R.S.O. 1970, c. 186, s. 71. Idem

(3) Subsection (1) does not apply to a manufacturer, merchant or common carrier that possesses any net referred to in subsection (1) for the purpose of sale or transportation. 1980, c. 47, s. 26. Exception

**75.** The ownership of the bed of a navigable water or of a lake or river does not include the exclusive right of fishing in the water that covers or flows over the bed unless that exclusive right is expressly granted by the Crown. R.S.O. 1970, c. 186, s. 72. Right to fish

#### AMPHIBIANS AND REPTILES

**76.** Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as are prescribed in the regulations, no person shall hunt or attempt to hunt or possess any amphibian or reptile. 1980, c. 47, s. 27, *part*. Hunting of amphibians and reptiles

**77.** Except under the authority of a licence and subject to the regulations, no person shall sell, offer for sale, purchase or barter, or be concerned in the sale, purchase or barter, of any amphibian or reptile, or possess an amphibian or reptile for sale. 1980, c. 47, s. 27, *part*. Sale of amphibians and reptiles

**78.** Except with the written authority of the Minister and subject to such terms and conditions as he may impose, no person shall take an amphibian or reptile by any means for educational or scientific purposes. 1980, c. 47, s. 27, *part*. Hunting of amphibians and reptiles for educational or scientific purposes

#### DOGS

**79.** Except under the authority of a licence issued for the dog, no person shall use or be accompanied by a dog while hunting caribou, deer, elk, or moose. R.S.O. 1970, c. 186, s. 76; 1980, c. 47, s. 28. Use of dogs in hunting deer, etc.

**80.**—(1) No person owning, claiming to own or harbouring a dog shall allow it to run at large during the closed season for deer, elk, moose or bear in a locality that deer, elk, moose or bear usually inhabit or in which they or any of them are usually found, and a dog found running deer, elk, moose or bear during the closed season for deer, elk, moose or bear in such a locality may be killed on sight by an officer without incurring any liability or penalty therefor. Dogs running at large, etc.

Use of dogs  
in hunting  
deer, etc.,  
prohibited in  
designated  
areas

(2) No person shall use or be accompanied by a dog while hunting deer, elk, moose or bear in a part of Ontario that is designated in the regulations, and a dog found running at large in such a designated part of Ontario may be killed on sight by an officer without incurring any liability or penalty therefor. 1980, c. 47, s. 29.

Interpre-  
tation

**81.**—(1) In this section,

(a) “field trial” means an activity, the objective of which is to test the hunting skills of a dog;

(b) “training” means the process of teaching a dog,

(i) hunting skills, or

(ii) such skills as are necessary for participation in a field trial.

Field trials  
and training  
restricted

(2) Except with the written authority of the Minister and subject to such terms and conditions as he may impose, no person shall conduct,

(a) a field trial; or

(b) training,

that involves a game animal or a game bird during any closed season therefor. 1980, c. 47, s. 30.

#### LIVE GAME AND WOLVES

Live game  
kept in  
captivity

**82.**—(1) Except under the authority of a licence issued on such terms and conditions as are prescribed in the regulations, no person shall keep live game or a wolf in captivity for more than ten days.

Seizure of  
animals,  
cages, etc.

(2) Live game or a wolf kept in captivity contrary to this section and any cage, pen, crate, shelter or other enclosure used in connection therewith shall be seized, and, upon conviction of the person in possession or control thereof, becomes the property of the Crown in right of Ontario and may be disposed of by the Minister. R.S.O. 1970, c. 186, s. 79 (1, 2).

Application  
of section

(3) This section does not apply where live game or a wolf is kept in captivity in a zoo operated by a municipality or for scientific or educational purposes in a public institution. 1973, c. 108, s. 9.

#### TRANSPORTATION AND EXPORT

Export  
of game  
by non-  
residents  
R.S.C. 1970,  
c. M-12

**83.**—(1) No non-resident entitled to hunt under a licence shall export more game than the number he is authorized to possess by this Act or the regulations or the *Migratory Birds Convention Act* (Canada) or the regulations made under that Act.

(2) No person shall ship or transport or cause to be shipped <sup>Transport of fish or game illegally taken</sup> or transported, or receive or possess for shipment or transport, fish or game caught, taken or killed in Ontario during the closed season.

(3) The Minister may issue a permit not inconsistent with <sup>Transport of game under permit</sup> any law of Canada to export from Ontario or to transport in Ontario at any time any game, whether dead or alive, upon proof under oath satisfactory to him that the game has been lawfully taken.

(4) The Minister may issue to a non-resident entitled to <sup>Game export permits</sup> hunt under a licence a permit not inconsistent with any law of Canada to export from Ontario or to transport in Ontario at any time any animal or bird killed by him under the licence upon proof satisfactory to the Minister that the animal or bird has been lawfully taken and upon payment of the fee prescribed in the regulations and any such permit shall be deemed to be a permit mentioned in subsection (3). R.S.O. 1970, c. 186, s. 80.

**84.** No person shall ship or transport or cause to be shipped <sup>Receptacles to be marked</sup> or transported, or receive or possess for shipment or transport, a receptacle containing game or fish that is not plainly marked on the outside in such a manner as to give a description of the contents and the name and address of the consignee and of the consignor. R.S.O. 1970, c. 186, s. 81.

#### PROCEDURE

**85.** A contravention of this Act or the regulations or of the <sup>Offence</sup> terms and conditions of a licence is an offence against this Act. R.S.O. 1970, c. 186, s. 82.

**86.** Where in a prosecution under this Act it appears in evidence that more than one offence of the same kind was committed <sup>Similar offence on the same day</sup> at the same time or on the same day, the court shall in one conviction impose all the penalties at the same time. R.S.O. 1970, c. 186, s. 84.

**87.** Except where otherwise provided, the *Provincial Offences Act* applies to all prosecutions under this Act. <sup>Procedure R.S.O. 1980, c. 400</sup> R.S.O. 1970, c. 186, s. 85.

**88.—(1)** The Minister may authorize any officer to collect a <sup>Money payment as security for appearance in court</sup> money payment as security for appearance in court from any person against whom the officer is about to commence proceedings for an offence against this Act.

(2) Where a money payment has been collected under subsection (1) and the person charged does not appear in court, he may be tried *in absentia* and, upon conviction, whether or not he has appeared in court, the money payment shall be applied <sup>Disposition of money payments</sup>

to the payment of any fine imposed and the costs, and the balance, if any, shall be remitted to the person convicted, and, where no conviction is made, the money payment shall be remitted to the person who made it. R.S.O. 1970, c. 186, s. 86.

Cancellation  
and revival  
of licences  
after  
conviction

**89.**—(1) Upon the conviction of any person of an offence against this Act or the Ontario Fishery Regulations, any licence, except a licence to hunt, other than a licence to hunt or trap fur-bearing animals, which is held by him and which is related to the offence, shall be deemed to be cancelled without further action or notice, but the Minister may revive the licence upon such terms and conditions as he considers proper.

Cancellation  
and pro-  
hibition  
against  
issue of  
licence

R.S.O. 1980,  
c. 173

R.S.C. 1970,  
cc. M-12,  
C-34

(2) Upon the conviction of any person of an offence against this Act or under the *Forest Fires Prevention Act*, the *Migratory Birds Convention Act* (Canada) or the regulations made under that Act, or under section 176, 202, 203, 204, 387, 388, 389, 390, 392, 398, 399, 400, 401 or 402 of the *Criminal Code* (Canada) as amended or re-enacted from time to time, committed while using or in possession of a fire-arm for the purpose of hunting, the court may cancel any licence to hunt, except a licence to hunt or trap fur-bearing animals, issued to such person, and, upon such conviction, the court may order that such person shall not apply for or procure any licence to hunt, except a licence to hunt or trap fur-bearing animals, during the period stated in the order.

Idem

(3) Upon the conviction of a holder of a licence mentioned in subsection 82 (1) of an offence against section 401 or 402 of the *Criminal Code* (Canada) committed in respect of live game or a wolf held under the licence, the court may cancel the licence.

Idem

(4) Upon conviction of any person of an offence against section 19, the court, in addition to making an order under subsection (2), may order that the convicted person shall not apply for or procure a licence to hunt, except upon the successful completion of an examination for applicants for licences.

Offence

(5) Every person who fails to comply with an order made against him under subsection (2) or (3) is guilty of an offence against this Act. R.S.O. 1970, c. 186, s. 88.

Evidence

**90.** In prosecutions under this Act in respect of,

- (a) taking, killing, procuring or possessing game or fish, or any part thereof, the onus is upon the person charged to prove that the game or fish or part thereof was lawfully taken, killed, procured or possessed by him;
- (b) hunting or trapping, the possession of a gun, decoy or other implement for hunting or trapping in or near a place that game inhabits or where game is usually

found is *prima facie* proof that the person in possession of it was hunting or trapping, as the case may be; or

- (c) making of returns by a licensee or an issuer of licences, the production of a return is *prima facie* proof of the making of such return and the contents thereof. R.S.O. 1970, c. 186, s. 89.

**91.** Except where otherwise provided, every person who commits an offence against this Act is liable to a fine of not more than \$5,000. R.S.O. 1970, c. 186, s. 90; 1980, c. 47, s. 32. General  
penalty

**92.** The Lieutenant Governor in Council may make regulations, Regulations  
by Lt. Gov.  
in Council

1. establishing classes for licences referred to in this Act or the regulations or the Ontario Fishery Regulations, governing the issue, form, renewal, transfer, refusal and cancellation of licences or any class of them, prescribing their duration, territorial limitations, terms and conditions and the fees payable therefor, and limiting the number of licences of any class that may be issued;
2. requiring and prescribing the issue, form, duration and terms and conditions of coupons or tags to be issued with any licence, and requiring the licensee to make such use thereof as is prescribed;
3. prescribing the calibre and type of fire-arms that may be used under section 23; R.S.O. 1970, c. 186, s. 91, pars. 1-3.
4. regulating, restricting or prohibiting the use of blinds and decoys; 1973, c. 108, s. 10 (1), *part*.
5. prescribing the fees payable for game export permits for any species of animal or bird;
6. respecting the issue of licences to trap fur-bearing animals on Crown lands and dividing Ontario or any part thereof into trap-line areas and designating such areas by identifying numbers and initials;
7. providing for licensing persons to hunt in any provincial park in which hunting is permitted under paragraph 32 or on Crown lands in any part of Ontario designated under paragraph 33; R.S.O. 1970, c. 186, s. 91, pars. 4-6.
8. prescribing the fee to enter upon lands owned by the Crown that are used for the purpose of propagating or retaining game or fish; 1973, c. 108, s. 10 (1), *part*.

9. establishing or approving one or more systems for the use of designated railway lands for hunting or fishing as provided for in the exception mentioned in subsection 18 (10); 1980, c. 10, s. 2 (2).
10. prescribing the terms and conditions upon which licences may be issued to persons under sixteen years of age; R.S.O. 1970, c. 186, s. 91, par. 7.
11. designating classes of licences and prescribing parts of Ontario for the purposes of subsection 37 (8); 1980, c. 47, s. 33 (1).
12. declaring animals, other than those mentioned in paragraph 11 of section 1, to be fur-bearing animals; R.S.O. 1970, c. 186, s. 91, par. 9.
13. declaring a species of Amphibia to be an amphibian;
14. declaring a species of Reptilia to be a reptile; 1980, c. 47, s. 33 (2), *part.*
15. governing the sale of or traffic in any game, prescribing the fees payable for a seal, tag or other means of identification that is furnished by the Ministry to the holder of a licence to sell any such game, and requiring such holder to use such seal, tag or other means of identification in the manner prescribed; R.S.O. 1970, c. 186, s. 91, par. 10; 1972, c. 1, s. 1.
16. designating the species of game birds that may be propagated, sold or possessed for propagation or sale under a licence mentioned in section 58; R.S.O. 1970, c. 186, s. 91, par. 11.
17. designating the species of game animals that may be propagated or possessed for propagation under a licence mentioned in subsection 51 (2); 1980, c. 47, s. 33 (2), *part.*
18. authorizing and regulating the sale of game brought into Ontario and lawfully hunted or procured according to the law of the place in which it was hunted or procured; R.S.O. 1970, c. 186, s. 91, par. 12.
19. prescribing the number, age or sex of game animals or game birds that may be taken or possessed; 1978, c. 52, s. 2 (1).
20. prohibiting the taking or possession of game animals or game birds in excess of the number prescribed under paragraph 19 or 22;

21. prohibiting the taking or possession of any game animal or game bird other than a game animal or game bird of the age or sex prescribed under paragraph 19 or 22;
22. defining "hunting in a party", prescribing the number, age or sex of game animals or game birds that may be taken or possessed by members of a party, designating parts of Ontario where persons may hunt in a party and regulating or prohibiting hunting in a party in any area. 1978, c. 52, s. 2 (2).
23. prescribing the open seasons during which and the terms and conditions upon which black bear, polar bear, caribou, deer, elk or moose may be hunted; R.S.O. 1970, c. 186, s. 91, par. 14; 1980, c. 47, s. 33 (3).
24. prescribing the open seasons during which and the terms and conditions upon which ruffed grouse, spruce grouse, Hungarian partridge, pheasant, sharptailed grouse, greater prairie-chicken, ptarmigan, bob-white quail or wild turkey may be hunted; R.S.O. 1970, c. 186, s. 91, par. 15.
25. designating any parts of Ontario in which no person shall use or be accompanied by a dog while hunting deer, elk, moose or bear; R.S.O. 1970, c. 186, s. 91, par 16; 1980, c. 47, s. 33 (4).
26. limiting the number of licences that may be issued to own or operate game bird hunting preserves, designating the species of game birds that may be possessed under such a licence, prescribing minimum and maximum areas for preserves, requiring and regulating the posting of boundaries of preserves and the release of game on preserves, and regulating the spacing of preserves, the taking or killing of game on preserves and the use of preserves for hunting;
27. providing for the exemption from subsection 59 (1) and from the regulations or any provision thereof, of any person or class of persons or any game bird hunting preserve or class thereof, and prescribing the terms and conditions therefor;
28. limiting the number of licences that may be issued to own or operate fishing preserves, designating the species of fish that may be possessed under such a licence, prescribing minimum and maximum areas for preserves, requiring and regulating the posting of boundaries of preserves and the release of fish on preserves, and regulating the spacing of preserves, the taking or killing of fish on preserves and the use of preserves for fishing;

29. providing for the exemption from subsection 73 (1) and from the regulations or any provision thereof, of any person or class of persons, or any fishing preserve or class thereof, and prescribing the terms and conditions therefor;
30. designating parts of Ontario as Crown game preserves and providing for licensing persons to possess guns in Crown game preserves;
31. prohibiting and regulating entry on Crown game preserves on Crown land;
32. prescribing the conditions under which animals or birds may be hunted in provincial parks or Crown game preserves, providing for and regulating the possession or use of traps, explosives, guns or sporting implements in provincial parks or Crown game preserves, and prohibiting the use of motor-boats for trolling in provincial parks; R.S.O. 1970, c. 186, s. 91, pars. 17-23.
33. designating Crown lands or lands in which the Crown has acquired an interest or in respect of which an agreement has been entered into under section 6 on which hunting may be regulated, limiting and regulating the number of hunters that may hunt at any time and the hours during which hunting may be carried on, and prescribing the fees that may be charged for the use of equipment and facilities supplied by the Ministry; R.S.O. 1970, c. 186, s. 91, par. 24; 1972, c. 1, s. 1.
34. designating parts of Ontario as "hinterland areas" and prohibiting persons, other than residents of the areas, from entering and travelling about therein for the purpose of fishing or hunting;
35. prescribing the terms and conditions upon which aircraft may be used while hunting; R.S.O. 1970, c. 186, s. 91, pars. 25, 26.
36. prescribing the terms and conditions upon which a person may use a ferret for hunting game animals;
37. prescribing the terms and conditions upon which a person may use poison for taking or killing any animal; R.S.O. 1970, c. 186, s. 91, pars. 28, 29.
38. regulating, restricting or prohibiting the possession or use of traps; 1980, c. 47, s. 33 (5).

39. regulating, restricting or prohibiting the possession or use of fire-arms for the purpose of hunting;
40. prescribing the times during which and the terms and conditions on which black bear may be trapped; R.S.O. 1970, c. 186, s. 91, pars. 31, 32.
41. providing for and establishing a program for the education of trappers, including the appointment of instructors; 1980, c. 47, s. 33 (6).
42. providing for and establishing a program to promote the safe handling of fire-arms by hunters;
43. providing for the appointment of examiners and for the examination of applicants for licences and prescribing fees for examinations; R.S.O. 1970, c. 186, s. 91, pars. 33, 34.
44. governing the sale under subsection 72 (1) of smallmouth bass, largemouth bass, brook trout or rainbow trout, prescribing the fees payable for a seal, tag or other means of identification that is furnished by the Ministry to the holder of a licence to propagate and sell any such fish, and requiring such holder to use such seal, tag or other means of identification in the manner prescribed; R.S.O. 1970, c. 186, s. 91, par. 35; 1972, c. 1, s. 1.
45. prescribing the royalties payable in respect of fish or under section 69, and excepting any fish or fur-bearing animal therefrom; R.S.O. 1970, c. 186, s. 91, par. 36.
46. designating counties and regional municipalities for the purpose of subsection 21 (1); R.S.O. 1970, c. 186, s. 91, par. 37, *revised*.
47. prescribing the open seasons during which amphibians and reptiles may be taken, the number and size of amphibians and reptiles that may be taken or possessed and the methods whereby amphibians and reptiles may be taken and designating the parts of Ontario where amphibians and reptiles may be taken;
48. governing the sale, purchase and barter of amphibians and reptiles; 1980, c. 47, s. 33 (7).
49. permitting residents of any province extending a similar right to Ontario residents to be classed as Ontario residents for the purpose of any specified licence under this Act;

50. requiring any person to keep such records and make such reports and returns as are prescribed; R.S.O. 1970, c. 186, s. 91, pars. 39, 40.
51. designating parts of Ontario as wildlife management units;
52. limiting and regulating the number of hunters that may hunt at any time in a wildlife management unit and the hours during which hunting may be carried on in a wildlife management unit;
53. establishing a system for registering or reporting game taken or possessed;
54. prescribing the time or times and the terms and conditions upon which raccoon may be chased under section 24;
55. prescribing the time or times and the terms and conditions upon which fox, coyote or wolf may be chased under section 24; 1980, c. 47, s. 33 (8).
56. respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 186, s. 91, par. 41.

Regulations  
by Minister

**93.—**(1) The Minister may make regulations,

1. prescribing the open seasons during which and the terms and conditions upon which any fur-bearing animal may be hunted or trapped or the pelt of any of them may be possessed;
2. prescribing the open seasons during which and the terms and conditions upon which rabbits or black, grey or fox squirrels may be hunted or trapped;
3. setting apart waters for the conservation or propagation of frogs;
4. regulating or prohibiting the placing of huts on ice for the purpose of fishing and regulating their use and requiring and regulating their removal;
5. for the purposes of section 45, designating parts of Ontario as areas in which no person shall act as a guide except under the authority of a licence;
6. designating parts of Ontario as areas in which no non-resident shall hunt deer, elk or moose without employing

or being accompanied by a licensed guide. R.S.O.  
1970, c. 186, s. 92; 1980, c. 47, s. 34.

(2) Paragraph 4 of subsection (1) is repealed on a day to be Repeal  
named by proclamation of the Lieutenant Governor. 1973,  
c. 174, ss. 1, 2.

**94.** Any regulations may be limited territorially or as to time Regulations  
or otherwise. R.S.O. 1970, c. 186, s. 93. may be  
limited



## CHAPTER 183

## Gaming Act

1. Every agreement, note, bill, bond, confession of judgment, *cognovit actionem*, warrant of attorney to confess judgment, mortgage or other security, or conveyance, the consideration for which, or any part of it, is money or other valuable thing won by gaming, or by playing at cards, dice, tables, tennis, bowls or other game, or by betting on the sides or hands of the players, or for reimbursing or repaying any money knowingly lent or advanced for such gaming or betting, or lent or advanced at the time and place of the game or play to a person so gaming, playing, or betting, or who, during the game or play, so plays, games or bets, shall be deemed to have been made, drawn, accepted, given or executed for an illegal consideration. R.S.O. 1970, c. 187, s. 1.

2. If any person makes, draws, gives or executes any note, bill or mortgage for any consideration that is declared to be illegal by section 1 and actually pays to an endorsee, holder or assignee of the note, bill or mortgage the amount of the money thereby secured or any part thereof, such money shall be deemed to have been paid for and on account of the person to whom the note, bill or mortgage was originally given and to be a debt due and owing from such last named person to the person who paid the money, and accordingly is recoverable by action. R.S.O. 1970, c. 187, s. 2.

3. Any person who, at any time or sitting, by playing at cards, dice, tables or other game, or by betting on the sides or hands of the players, loses to any person so playing or betting, in the whole, the sum or value of \$40 or upwards, and pays or delivers the same or any part thereof, may, within three months thereafter, sue for and recover the money or thing so lost and paid or delivered. R.S.O. 1970, c. 187, s. 3.

4. Every contract or agreement by way of gaming or wagering is void, and no suit shall be brought or maintained for recovering any sum of money or valuable thing alleged to be won upon a wager, or that has been deposited in the hands of any person to abide the event on which a wager has been made, but this section does not apply to a subscription or contribution, or agreement to subscribe or con-

tribute for or towards any plate, prize, or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise. R.S.O. 1970, c. 187, s. 4.

Promises to  
repay sums  
paid under  
contract  
void by  
section 4

**5.** Any promise, express or implied, to pay any person a sum of money paid by him under or in respect of a contract or agreement rendered void by section 4, or to pay a sum of money by way of commission, fee, reward or otherwise in respect of such a contract or agreement, or of any services in relation thereto or in connection therewith, is void, and no action shall be brought or maintained to recover any such sum of money. R.S.O. 1970, c. 187, s. 5.

## CHAPTER 184

## Gas and Oil Leases Act

## 1. In this Act,

Interpre-  
tation

- (a) "gas or oil lease" includes any agreement, whether by way of option, lease, grant or otherwise, granting the right to operate lands for the production and removal of natural gas or oil, or both, except a grant to so operate where the amount or payment of the consideration therefor is not dependent upon the operation of such lands or upon the production of gas or oil or upon the amount of gas or oil produced, and "lessee" and "lessor" have corresponding meanings and include heirs, successors, administrators, executors, assigns and transferees of the lessee or lessor, as the case may be;
- (b) "judge" means the judge of the county or district court of the county or district in which the land is situate. R.S.O. 1970, c. 188, s. 1.

2.—(1) Where the lessor of any land or any other person having an interest in such land or any person authorized by such lessor or other person alleges,

Application  
upon default

- (a) that a lessee has made default under the terms of a gas or oil lease affecting the land in that he has failed to commence to drill or has failed to complete the drilling of a well for natural gas or oil and has failed to pay rentals in lieu thereof; or
- (b) that a lessee has made default under the terms of a gas or oil lease affecting the land, other than a default specified in clause (a), and
  - (i) that the default has continued for a period of two years, or
  - (ii) that, the default having continued for a period of less than two years, the lessor has given notice in writing to the lessee specifying the default alleged and requiring the lessee to cure the default within thirty days of the giving of the notice, and that the lessee has not cured the default within such thirty days,

such lessor or other person may apply, upon affidavit, to a judge for an order declaring the lease void and, if the lease or any assignment or transfer thereof is registered, vacating every such registration.

Notice of  
default

(2) Notice of default under subclause (1) (b) (ii) shall be given to the lessee either by delivering it to him, leaving it at his residence or sending it to him by registered mail at his address as indicated in the lease, or at his last known address, but, where an assignment or transfer of the lease has been registered in the land registry office, the notice shall be given to the assignee or transferee, instead of the original lessee, in the manner prescribed in this subsection.

Appointment  
for inquiry  
into default

(3) The judge shall, in writing, appoint a time and place at which he will inquire and determine whether default has been made as alleged.

Service of  
notice of  
inquiry

(4) A notice in writing of the time and place appointed, together with a copy of the affidavit used upon the application, shall be served upon the lessee either by delivering them to him, leaving them at his residence or sending them to him by registered mail at his address as indicated in the lease, or at his last known address, or in such other manner and at such other address as the judge directs, not less than thirty days before the return of the appointment.

Idem

(5) Where an assignment or transfer of the lease has been registered in the land registry office, the appointment shall be served upon the assignee or transferee, instead of the original lessee, in the manner prescribed in subsection (4).

Idem

(6) Where an application is made by a person other than the lessor, the notice and affidavit mentioned in subsection (4) shall be served upon the lessor in the manner mentioned in that subsection. R.S.O. 1970, c. 188, s. 2.

Style of  
proceedings

**3.** The proceedings shall be entitled in the county or district court of the county or district in which the land lies, and shall be styled:

“In the matter of....., Lessor,  
and....., Lessee.”

R.S.O. 1970, c. 188, s. 3.

Where  
lessee fails  
to appear

**4.**— (1) If at the time and place appointed, the lessee fails to appear and it appears to the judge,

(a) that default has been made as indicated in clause 2 (1) (a);  
or

(b) that default has been made as indicated in clause 2 (1) (b)  
and,

(i) has continued for a period of two years, or

(ii) has not been cured within thirty days after the  
giving of notice under subclause 2 (1) (b) (ii),

as the case may be, the judge may, notwithstanding any provision in the gas or oil lease requiring the lessor to give notice to the lessee of any default, make an order declaring that the gas or oil lease is void and, if the lease or any assignment or transfer thereof is registered, vacating every such registration.

(2) If the lessee appears, the judge shall, in a summary <sup>Where</sup>  
manner, hear the parties and their witnesses and examine into <sup>lessee</sup>  
the matter, and, if it appears to the judge, <sup>appears</sup>

(a) that default has been made as indicated in clause 2 (1) (a);  
or

(b) that default has been made as indicated in clause 2 (1) (b)  
and,

(i) has continued for a period of two years, or

(ii) has not been cured within thirty days after the  
giving of a notice under subclause 2 (1) (b) (ii),

as the case may be, the judge may, notwithstanding any provision in the gas or oil lease requiring the lessor to give notice to the lessee of any default, make an order declaring that the gas or oil lease is void and, if the lease or any assignment or transfer thereof is registered, vacating every such registration.

(3) Every order shall contain a description of the land <sup>Description</sup>  
affected sufficient to permit registration of the order, and, <sup>of land</sup>  
where the order vacates the registration of a lease or an assignment or transfer thereof, the order shall contain a reference to the registration number of such lease, assignment or transfer. R.S.O. 1970, c. 188, s. 4.

Irregularities in procedure

**5.** The judge has the same power to amend or excuse irregularities in the proceedings as he has in an action. R.S.O. 1970, c. 188, s. 5.

Subsequent drilling, etc., not to be taken into account

**6.** The judge, upon the hearing of the application, shall not take into account,

- (a) any drilling done or sought to be done after the making of the application;
- (b) any rentals or other remuneration tendered after the making of the application; or
- (c) any other attempt, made after the making of the application, to cure a default,

unless such drilling, tender or other action is agreed to or accepted by the lessor. R.S.O. 1970, c. 188, s. 6.

Appeal

**7.** An appeal lies to the Divisional Court from the order of the judge granting or refusing an order under section 4. R.S.O. 1970, c. 188, s. 7.

Registration of order

**8.** Any order made under section 4, or a copy thereof certified by the clerk of the court under the seal of the court, may be registered in the proper land registry office. R.S.O. 1970, c. 188, s. 8.

## CHAPTER 185

## Gasoline Handling Act

## 1. In this Act and in the regulations,

Interpre-  
tation

- (a) "associated product" means any product of petroleum other than gasoline, wax and asphalt;
- (b) "bulk plant" means one or more storage tanks, including the appurtenances thereof, where gasoline or an associated product is received by pipe line, tank vessel, tank car or tank vehicle and is stored in bulk for subsequent transmission by pipe line or transportation or distribution by tank vessel, tank car or tank vehicle;
- (c) "consumer outlet" means any premises at which gasoline or an associated product of the operator of the outlet is put into the fuel tanks of motor vehicles used by the operator of the outlet or into portable containers used by the operator of the outlet;
- (d) "Director" means the Director of the Energy Branch;
- (e) "equipment" means equipment used or to be used in the handling of gasoline or an associated product;
- (f) "flash point" means the lowest temperature, determined by using a Tagliabue closed-cup tester, at which the vapour of a product of petroleum forms a flammable mixture in air;
- (g) "gasoline" means a product of petroleum that has a flash point below 100°F. and that is designed for use in an internal combustion engine;
- (h) "handling" means the storing, transmitting, transporting or distributing of gasoline or an associated product, and includes putting gasoline or an associated product into the fuel tank of a motor vehicle, motor boat or other water craft or into a container;
- (i) "inspector" means an inspector authorized to enforce this Act;

- (*j*) "marina" means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor boats and other water craft or into portable containers;
- (*k*) "Minister" means the Minister of Consumer and Commercial Relations;
- (*l*) "portable container" means a container that has a capacity of ten gallons or less, that is designed, manufactured and used or to be used for the storage or conveyance of gasoline or an associated product;
- (*m*) "regulation" means a regulation made under the authority of this Act;
- (*n*) "service station" means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor vehicles or into portable containers;
- (*o*) "transport" means to convey in or on a vehicle gasoline or an associated product, exclusive of the fuel carried for use in the vehicle, and "transporting" and "transportation" have corresponding meanings. R.S.O. 1970, c. 189, s. 1; 1972, c. 1, s. 41 (1); 1973, c. 115, s. 1 (1, 2).

Gasoline  
handling  
equipment  
must be  
approved

**2.** No person shall,

- (*a*) offer for sale or sell;
- (*b*) install; or
- (*c*) use in a service station, consumer outlet, marina or bulk plant,

any equipment that is not approved by the Director pursuant to the regulations. R.S.O. 1970, c. 189, s. 2; 1973, c. 115, s. 2.

Containers  
must be  
approved

**3.** In a service station, consumer outlet, marina or bulk plant, no person shall put gasoline or an associated product having a flash point below 100°F. into any container of a type that is not approved by the Director pursuant to the regulations. R.S.O. 1970, c. 189, s. 3; 1973, c. 115, s. 3.

Approval of  
specifica-  
tions for  
equipment

**4.** The Director may establish or approve specifications or test reports for equipment and designate organizations to

test equipment in accordance with such requirements. R.S.O. 1970, c. 189, s. 4; 1973, c. 115, s. 4.

5. All equipment shall be installed, tested, operated or Equipment must comply with regulations in accordance with the regulations. R.S.O. 1970, c. 189, s. 5.

6.—(1) No person shall,

(a) operate a service station;

(b) operate a marina;

(c) operate a bulk plant; or

(d) transport gasoline or an associated product,

Licence to operate service station, etc.

unless licensed to do so by the Director.

(2) No person shall install, repair, service or remove Installation, repair, etc., of equipment equipment at a bulk plant, consumer outlet, marina or service station unless he is,

(a) engaged in the business of installing, repairing, servicing or removing such equipment; and

(b) registered as a contractor by the Director for that purpose,

or he is an employee of such person.

(3) Subject to section 7, any person who makes appli- Entitlement to licence or registration cation for a licence in accordance with this Act and the regulations for any of the purposes enumerated in subsection (1) or makes application for registration as a contractor in accordance with this Act and the regulations and pays the prescribed fee is entitled to be issued such licence or registered as a contractor by the Director.

(4) Subject to section 8, a licensee or registrant who Entitlement to renewal of licence or registration makes application for a renewal of his licence or registration in accordance with this Act and the regulations and pays the prescribed fee is entitled to a renewal of his licence or registration by the Director. 1973, c. 115, s. 5 (1).

7. Subject to section 9, the Director may refuse to issue Refusal to issue licence or to register a licence to an applicant or to register an applicant who has otherwise complied with the requirements of section 6 if in his opinion the past conduct of the applicant or where the applicant is a corporation, of its officers, directors or servants, affords reasonable grounds for belief that the operations to be carried on pursuant to the licence or registration will not be carried on in accordance with law and in a safe manner. 1973, c. 115, s. 6, *part*.

Suspension,  
etc., of  
licence or  
registration

8. Subject to section 9, the Director may refuse to renew or may suspend or revoke a licence or registration if in his opinion the licensee or registrant or where the licensee or registrant is a corporation, any officer, director or servant thereof, has contravened or has knowingly permitted any person under his control or direction or associated with him in the carrying on of operations pursuant to the licence or registration to contravene any provision of this Act or of the regulations or of any other Act or regulation applying to the carrying on of such operations, and such contravention occurred through lack of competence or with intent to evade the requirements of such provision. 1973, c. 115, s. 6, *part.*

Notice of  
proposal to  
refuse or  
revoke

9.—(1) Where the Director proposes to refuse to issue or renew a licence or registration or proposes to suspend or revoke a licence or registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant, licensee or registrant informing him that he has a right to a hearing by a judge of the county or district court of the county or district in which he intended to carry on or carried on his operations under the licence or registration if he applies therefor within fifteen days after service of the notice by the Director, and the applicant, licensee or registrant may within such time apply to the judge for a hearing.

Powers of  
Director  
where no  
hearing

(2) Where an applicant, licensee or registrant does not apply for a hearing in accordance with subsection (1), the Director may carry out the proposal stated in his notice under subsection (1).

Powers of  
judge where  
hearing

(3) Where an applicant, licensee or registrant applies to a judge for a hearing in accordance with subsection (1), the judge shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may by order direct the Director to carry out his proposal or refrain from carrying out his proposal and take such action as the judge considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the judge may substitute his opinion for that of the Director.

Service of  
notice

(4) The Director may serve notice under subsection (1) personally or by registered mail addressed to the applicant, licensee or registrant at his address last known to the Director and, where notice is served by registered mail, the notice shall be deemed to have been served on the third day after the day of mailing unless the person to whom notice is being given establishes to the judge to whom he applies for a hearing that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice until a later date.

(5) A judge to whom application is made by an applicant, licensee or registrant for a hearing under subsection (1) may extend the time for making the application either before or after expiration of the time fixed therein, where he is satisfied that there are *prima facie* grounds for granting relief to the applicant, licensee or registrant pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as he considers proper consequent upon the extension. <sup>Extension of time for hearing</sup>

(6) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence or registration, a licensee or registrant has applied for renewal of his licence or registration and paid the prescribed fee, his licence or registration shall be deemed to continue, <sup>Continuation of licences or registrations pending renewal</sup>

(a) until the renewal is granted; or

(b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for applying to a judge for a hearing expires and, where a hearing is applied for, until the judge has made his order. 1973, c. 115, s. 6, *part*.

**10.**—(1) The Director, the applicant, licensee or registrant who has applied for the hearing and such other persons as the judge may specify are parties to the proceedings before a judge under section 9. <sup>Parties</sup>

(2) Notice of a hearing under section 9 shall afford to the applicant, licensee or registrant a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence or registration. <sup>Notice of hearing</sup>

(3) An applicant, licensee or registrant who is a party to proceedings under section 9 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1973, c. 115, s. 7. <sup>Examination of documentary evidence</sup>

(4) The oral evidence taken before the judge at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the county court. <sup>Recording of evidence</sup>

(5) The findings of fact of a judge pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. 1971, c. 50, s. 43 (2), *part*. <sup>Findings of fact</sup>   
 <sup>R.S.O. 1980, c. 484</sup>

Appeal from  
order of  
judge

**11.**—(1) Any party to proceedings before a judge may appeal from the decision or order of the judge to the Divisional Court in accordance with the rules of court.

Record to be  
filed in court

(2) Where notice of an appeal is served under this section, the judge shall forthwith file in the Supreme Court the record of the proceedings before him in which the decision or order was made, which, together with the transcript of the evidence before the judge if it is not part of the record of the judge, shall constitute the record in the appeal.

Minister  
entitled to  
be heard

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. 1971, c. 50, s. 43 (2), *part*.

Decision

(4) The Divisional Court may, on the appeal, exercise all the powers of the judge appealed from and for such purpose the court may substitute its opinion for that of the Director or of the judge or the court may refer the matter back to the judge for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1971, c. 50, s. 43 (2), *part*; 1973, c. 115, s. 8.

Provisional  
order of  
Director

**12.** Notwithstanding section 9, the Director, by notice to a licensee or registrant and without a hearing, may provisionally refuse renewal of or suspend the licence or registration where the carrying on of the operations under the licence or registration is, in the Director's opinion, an immediate threat to public safety or the safety of any person and the Director so states in the notice giving his reasons therefor, and thereafter sections 9, 10 and 11 apply as if the notice given under this section were a notice of a proposal to revoke the licence or registration served under subsection 9 (1). 1973, c. 115, s. 9.

Employers  
must take  
reasonable  
precautions

**13.** Every person who employs another person in the handling of gasoline or an associated product or in the installing of equipment shall take every precaution that is reasonable in the circumstances to ensure that his employees comply with this Act and the regulations. R.S.O. 1970, c. 189, s. 7.

Inspectors  
R.S.O. 1980,  
c. 139

**14.**—(1) Every inspector appointed for the purposes of the *Energy Act* is authorized to enforce this Act.

(2) Every inspector may, for the purposes of this Act and the regulations,

(a) enter any premises where he has reason to believe there has been, are or may be hazardous conditions relative to gasoline or an associated product;

- (b) make such inspections, tests and inquiries as are necessary to ascertain whether this Act and the regulations are being complied with;
- (c) take samples of any liquid that he has reason to believe is or may contain gasoline or an associated product; and
- (d) require the production of any licence or other document prescribed by a regulation, and examine and copy it.

(3) An inspector may give instructions orally or in writing <sup>Instructions</sup> to any person with respect to any matter in order to bring about compliance with this Act and the regulations and may require that his instructions be carried out within such time as he specifies.

(4) Where a person to whom an inspector gives oral <sup>idem</sup> instructions requests the inspector to put his instructions in writing, he shall do so. R.S.O. 1970, c. 189, s. 8 (1-4).

(5) Any person who considers himself aggrieved by any <sup>Appeal from instructions of inspector</sup> instructions given by an inspector under this section may forthwith appeal to the Director, but the bringing of such appeal does not affect the operation of the instructions appealed from until disposition of the appeal. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (1).

(6) An appeal under subsection (5) may be made in <sup>How made</sup> writing or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the hearing. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (2).

(7) The appellant, the inspector from whom the appeal is <sup>Parties</sup> taken and such other persons as the Director may specify are parties to an appeal under this section. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (3).

(8) On an appeal under this section, the Director shall <sup>Powers of Director on appeal</sup> hear and dispose of it as promptly as is practicable and may substitute his findings or opinions for those of the inspector who gave the instructions appealed from and may affirm or reverse such instructions or give new instructions in substitution therefor and for such purpose has all the powers of the inspector and the instructions of the Director shall stand in the place of and have like effect under this Act and the regulations as the instructions of the inspector. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (4).

Duty to  
assist  
inspector

(9) The occupant of any premises and his servants, agents and employees shall give reasonable assistance to an inspector in the exercise of his powers under this Act.

No personal  
liability

(10) No inspector is personally liable for anything done by him in the exercise of his powers under this Act. R.S.O. 1970, c. 189, s. 8 (5, 6).

Crown not  
relieved of  
liability  
R.S.O. 1980,  
c. 393

(11) Subsection (10) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an inspector and to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (10) had not been enacted. 1971, c. 50, s. 43 (3), *part*.

Regulations

**15.—**(1) The Lieutenant Governor in Council may make regulations,

- (a) appointing such persons or classes of persons as may be necessary to assist in the enforcement of this Act and the regulations;
- (b) exempting any person or class of persons from this Act or the regulations or any of the provisions thereof;
- (c) exempting any equipment or any class of equipment from this Act or the regulations or any of the provisions thereof;
- (d) respecting the term, issue, renewal and posting of licences and registrations and prescribing the fees therefor;
- (e) designating organizations to test equipment to specifications established or approved by the Director and, where the equipment conforms to the specifications, to place their label thereon;
- (f) prescribing procedures for installing, testing, operating and using equipment;
- (g) respecting the approval by the Director of equipment or any type thereof;
- (h) prescribing grades of gasoline and associated products, and providing for the identification thereof;
- (i) prescribing forms and providing for their use;

- (j) requiring the reporting of accidents, spills and leaks involving gasoline or associated products;
- (k) providing for and requiring the keeping of records and plans and the making of affidavits, returns, statements or reports on the handling of gasoline and associated products;
- (l) requiring and providing for the approval of design and construction standards and drawings for equipment and installations. R.S.O. 1970, c. 189, s. 9; 1971, c. 50, s. 43 (4); 1973, c. 115, s. 11 (1-4).

(2) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or specifications and may require compliance with any code or specifications that is so adopted. 1973, c. 115, s. 11 (5). Adoption of  
codes by  
reference

**16.** This Act and the regulations prevail over any municipal by-law. R.S.O. 1970, c. 189, s. 10. Act prevails  
over by-laws

**17.** Every person who,

- (a) contravenes or fails to comply with any provision of this Act or the regulations;
- (b) knowingly makes a false statement in any document prescribed by the regulations; or
- (c) fails to carry out the instructions of an inspector,

Offences  
and  
penalties

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 189, s. 11.

**18.** On a day to be named by proclamation of the Lieutenant Governor, Amendments  
to cl. 1 (g)  
and s. 3

- (a) clause 1 (g) is amended by striking out "100°F." in the second line and inserting in lieu thereof "40°C."; and
- (b) section 3 is amended by striking out "100°F." in the third line and inserting in lieu thereof "40°C.". 1978, c. 87, s. 13.



## CHAPTER 186

## Gasoline Tax Act

## 1. In this Act,

Interpre-  
tation

- (a) "assessment" includes a reassessment;
- (b) "aviation fuel" means any gas or liquid that is sold to be used or is used to create power in an aircraft and any product that is designated to be aviation fuel by the regulations;
- (c) "collector" means a person appointed in writing by the Minister to be a collector of tax under this Act;
- (d) "gasoline" means any gas or liquid, other than those described in subclause (iv), that may be used for the purpose of generating power by means of internal combustion and includes any substance, other than those described in subclause (iv), that is added thereto, but does not include the following products,
  - (i) aviation fuel, except when used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,
  - (ii) the products commonly known as diesel fuel, fuel oil, coal oil or kerosene, except when any such product is mixed or combined with gasoline,
  - (iii) products excluded from this Act by the regulations, except when any such product is mixed or combined with gasoline, or
  - (iv) ethyl alcohol, methyl alcohol, natural gas, manufactured gas or any product commonly known as liquefied petroleum gas;
- (e) "importer" means any person, other than a collector, who receives in Ontario gasoline or aviation fuel from a person outside Ontario who is not a collector, or who receives outside Ontario gasoline or aviation

fuel for the purpose of resale in Ontario or for his own use or the use of others at his expense in Ontario;

- (f) "Minister" means the Minister of Revenue;
- (g) "prescribed" means prescribed by the regulations made under this Act;
- (h) "purchaser" means any person purchasing or receiving delivery in Ontario of gasoline or aviation fuel for his own use or for the use of others at his expense, and includes an importer who brings into Ontario gasoline or aviation fuel for his own use or the use of others at his expense;
- (i) "regulations" means the regulations made under this Act;
- (j) "retailer" means a person who sells gasoline or aviation fuel for use by a purchaser and not for resale;
- (k) "Treasurer" means the Treasurer of Ontario and Minister of Economics;
- (l) "wholesaler" means a person who sells gasoline or aviation fuel for the purpose of resale. 1973, c. 99, s. 1; 1975, c. 11, s. 1; 1980, c. 24, s. 1.

Tax payable  
by purchaser  
of gasoline

2.—(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 4.6 cents per litre on all gasoline purchased, or delivery of which is received, by him.

Tax on  
aviation  
fuel

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.32 cents per litre on all aviation fuel purchased, or delivery of which is received, by him. 1979, c. 16, s. 1.

Tax to be  
paid at time  
of sale

(3) A purchaser, other than an importer, shall pay the tax imposed by this Act at the time of the purchase or delivery, as the case may be. 1973, c. 99, s. 2 (3).

Amounts  
in lieu  
of tax

(4) Where any person selling gasoline or aviation fuel receives any payment made as or in lieu of the tax payable under this Act, such payment shall be dealt with and accounted for as tax under this Act, and any person who fails to deal with and account for such payment in accordance with this Act and the regulations is liable to the same penalties and fines, and is guilty of the same offences, as would apply if the payment were the tax payable under this Act,

and the Minister may collect and receive such payment by the same remedies and procedures as are provided by this Act or the regulations for the collection and enforcement of the tax payable under this Act. 1978, c. 77, s. 1 (2).

**3.**—(1) No retailer in Ontario shall sell or deliver to a purchaser any gasoline or aviation fuel without collecting from the purchaser the tax imposed by this Act, and for the purpose of collecting such tax every retailer is an agent of the Minister.

Retailer to  
collect  
tax from  
purchaser

(2) Every retailer who is not also a collector shall pay over the tax collected by him to a collector at the time and in the manner required by this Act and the regulations. 1973, c. 99, s. 3.

Retailer to  
pay tax to  
collector

**4.**—(1) Every importer shall remit to the Treasurer, at the time and in the manner prescribed, the tax payable by him in respect of the gasoline or aviation fuel imported by him into Ontario for his own use or the use of others at his expense.

Importers to  
remit tax

(2) Every importer who sells in Ontario gasoline or aviation fuel shall collect and remit to the Treasurer, at the time and in the manner prescribed, the tax imposed by this Act in respect of such gasoline or aviation fuel, and for the purpose of collecting such tax every importer is an agent of the Minister. 1973, c. 99, s. 4.

Idem

**5.** Every purchaser is liable for the tax imposed by this Act until he has paid it. 1973, c. 99, s. 5.

Purchaser  
liable for  
tax

**6.**—(1) The Minister may appoint any person who is in the business of manufacturing gasoline or aviation fuel or of selling gasoline or aviation fuel for resale in Ontario to be a collector under this Act.

Appoint-  
ment of  
collector

(2) No person shall, unless he is a collector, a wholesaler or an importer, sell in Ontario for resale or deliver in Ontario for resale any gasoline or aviation fuel.

Only  
collector,  
wholesaler  
or importer  
may sell  
in Ontario  
for resale

(3) Every collector shall at the times and in the manner prescribed collect from any wholesaler, retailer or purchaser to whom the collector sells gasoline or aviation fuel the tax collectable and payable under this Act, and for that purpose every collector is an agent of the Minister for the collection of the tax imposed by this Act and for the remittance thereof to the Treasurer.

Collector to  
collect tax

Idem (4) No collector shall collect the tax imposed by this Act on the sale by him of gasoline or aviation fuel to a collector who is not a purchaser in respect of such gasoline or aviation fuel.

Idem (5) No person appointed a collector under subsection (1) shall thus be made ineligible as a member of the Assembly. 1973, c. 99, s. 6.

Security (6) The Minister may require that any person charged with collection of the tax imposed by this Act shall furnish security in such form and amount and for such length of time as the Minister considers necessary. 1979, c. 16, s. 2.

Termination  
of collector's  
appointment 7.—(1) The Minister may suspend or cancel the appointment of any person appointed to be a collector where,

(a) the person contravenes any of the provisions of this Act or the regulations; or

(b) the person has not delivered or sold, for resale in Ontario, any gasoline or aviation fuel for a period of three months,

but before a suspension or cancellation is made such person shall be afforded an opportunity to appear before the Minister to show cause why the appointment as a collector should not be suspended or cancelled, as the case may be.

Idem (2) Notwithstanding subsection (1), where a collector has failed to remit the tax that he has collected or any tax that was payable by him under this Act at the time and in the manner demanded of him, the Minister may, by notice in writing to the collector and without a hearing, suspend forthwith the appointment of the collector, and the notice shall state the failure of the collector for which his appointment is suspended, and the Minister shall, within fifteen days of the service of such notice of suspension, hold a hearing to determine whether the suspension of the collector's appointment should be rescinded or whether the collector's appointment should be cancelled.

Notice  
terminating  
collector's  
appointment (3) Notice of suspension or cancellation of the appointment of a collector is properly served if served either personally or by registered mail sent to the latest known address of the collector. 1973, c. 99, s. 7.

Returns 8.—(1) Every collector shall deliver to the Minister, without notice or demand, a return of tax collectable by him at the time and in the manner prescribed in the regulations.

(2) Every return shall be verified by a certificate of the collector and, if the collector is not an individual, of any one of its officers or its resident manager or representative in Ontario, certifying that the financial and other statements of information included therein or attached thereto are in agreement with the books of the collector and exhibit truly, correctly and completely all information for the period covered by the return. Idem

(3) Every collector who fails to comply with subsection (1) shall pay a penalty of \$200. Failure to comply

(4) Every collector who fails to complete the information required in the return to be delivered to the Minister under subsection (1) is guilty of an offence and on conviction is liable to a fine of \$200. 1973, c. 99, s. 8. Incomplete returns

9. Every collector shall remit with the return required by section 8 the amount of the tax payable by him or collectable by him, as the case may be, as shown therein. 1973, c. 99, s. 9. Transmission of tax

10.—(1) Every person who collects any tax under this Act shall be deemed to hold such tax in trust for Her Majesty the Queen in right of Ontario and shall remit to the Treasurer all such tax at such times and in such manner as is required by this Act and the regulations. Tax moneys are trust moneys

(2) Every tax that is payable under this Act by a collector or importer in respect of gasoline or aviation fuel of which he is the purchaser is deemed to be trust moneys in the hands of the collector or importer, as the case may be, held by him in trust for Her Majesty the Queen in right of Ontario, and the collector or importer shall remit to the Treasurer all such tax at the times and in the manner required by this Act and the regulations. 1973, c. 99, s. 10. Idem

11.—(1) Where any person fails to make a return or remittance as required under this Act or the regulations or if his returns are not substantiated by his records, the Minister may make an assessment of the tax collectable by such person or of the tax, interest or penalty payable by such person, as the case may be, for which he has not accounted. Assessment

(2) Where the Minister has made an assessment under subsection (1), he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall Notice of assessment

be remitted to the Treasurer by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Notice of  
assessment  
under subs. (1)

(3) Where the Minister has made an assessment under subsection (1), the notice of assessment may provide that the amount owing is payable forthwith.

Assessment  
from time  
to time

(4) The Minister may, at any time he considers reasonable, assess or reassess any tax collectable or any tax, interest or penalty payable by any person under this Act.

Assessment  
on inspection

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any collector, wholesaler, retailer or purchaser that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collectable or payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax collectable or of the tax, interest or penalty payable, as the case may be.

Notice of  
assessment  
under  
subs. (4) or (5)

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection (4) or (5) to the person so assessed, at his latest known address, or where the person has more than one address, one of which is in Ontario, the notice shall be sent to his address in Ontario, and the notice may provide that the amount owing is payable forthwith.

Continuation  
of liability  
for tax

(7) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister  
not bound  
by returns

(8) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding any return or information delivered or if no return or information has been delivered, assess the tax payable under this Act.

Assessment  
valid and  
binding

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken. 1973, c. 99, s. 11. Idem

**12.**—(1) Any amount payable or to be remitted to the Treasurer under this Act bears interest, at the rate prescribed by the regulations, from the day on which the amount should have been paid or remitted to the Treasurer to the day of payment. Unpaid taxes  
to bear  
interest

(2) Any payment to the Treasurer under this Act, other than a payment of penalties and other than fines imposed for offences, shall first be applied to any interest payable by the person making the payment or on account of whom the payment is made. 1973, c. 99, s. 12. Payments  
applied  
first to  
interest

**13.**—(1) Where a person objects to an assessment made under section 11, he may, within ninety days from the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. Notice of  
objection

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister. Service

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. 1973, c. 99, s. 13. Reconsidera-  
tion

**14.**—(1) After the Minister has given the notification required by subsection 13 (3), a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 13 (3). 1973, c. 99, s. 14 (1), *revised*. Appeal

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the local registrar of the Supreme Court for the county or district in which the person appealing resides or has his place of business. Appeal, how  
instituted

## Service

(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

Content of  
notice of  
appeal

(4) The person appealing shall set out in the notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in supporting his appeal.

Reply to  
notice of  
appeal

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Matter  
deemed  
action

(6) Upon the filing of the material referred to in subsection (5), the matter shall be deemed to be an action in the court.

Disposition  
of appeal

(7) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

## Idem

(8) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

## Procedure

(9) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under subsection (6), and every judgment and order given or made in every such action may be enforced in the

same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(10) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act. <sup>Irregularities</sup>

(11) The time within which a notice of objection under subsection 13 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. 1973, c. 99, s. 14 (2-11). <sup>Extension of time</sup>

**15.**—(1) Every collector, importer, wholesaler or retailer shall keep at his principal place of business records and books of account in such form and containing such information as will enable the accurate determination of the taxes collectable or payable under this Act. <sup>Records to be kept</sup>

(2) Every collector and importer shall, until written permission for their disposal is received from the Minister, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. 1973, c. 99, s. 15. <sup>Idem</sup>

**16.**—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept pursuant to this Act, and may, <sup>Investigations</sup>

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams or other documents that relate or may relate to either the information that is or should be in the books or records or to the amount of tax collectable or payable under this Act;
- (b) examine the property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax collectable or payable under this Act;

- (c) require a purchaser, retailer, wholesaler, importer or collector liable to collect or pay or considered possibly liable to collect or pay tax under this Act or, if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such purchaser, retailer, wholesaler, importer or collector to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any purchaser, retailer, wholesaler, importer or collector, or if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

- (a) any information or a return as required under this Act or the regulations; or
- (b) production or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding for or paying or liable to pay any amount to a purchaser, retailer, wholesaler, importer or collector, or from any partner, agent or official of any such person, partnership, syndicate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or other-

wise, or other documents, within such reasonable time as is stipulated therein.

(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

(5) The Minister may, by registered letter or by a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is collectable or payable under this Act by any purchaser or collector, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(7) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

(8) Notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

Administra-  
tion of  
oaths

(9) Declarations or affidavits in connection with returns delivered under this Act or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. 1973, c. 99, s. 16.

Extended  
time for  
making  
returns

**17.** The Minister may extend the time for making any return either before or after the time for making it has expired. 1973, c. 99, s. 17.

Recovery  
of tax

**18.—(1)** Upon default of payment of an amount assessed under section 11,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment or remittance under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance  
to be proved  
by affidavit

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies  
for recovery  
of tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way

prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty the Queen in right of Ontario. 1973, c. 99, s. 18.

**19.**—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act. Garnishment

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. Idem

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser. Liability of debtor

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection (1) may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Services of garnishee

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. 1973, c. 99, s. 19. Idem

**20.**—(1) Every person required to collect the tax imposed by this Act who fails to collect the tax is liable on conviction to a fine of not less than \$200 and not more than an amount equal to the amount of tax that should have been collected as determined under subsection (4). Penalty for failure to collect tax

Penalty for failure of employee to collect tax

(2) Every employee of a person required to collect the tax imposed by this Act who permits or authorizes or is a party or privy to supplying gasoline or aviation fuel to a purchaser without collecting from the purchaser the tax imposed by this Act is guilty of an offence and on conviction is liable to a fine equal to the amount of the tax that should have been collected as determined under subsection (4).

Idem

(3) Every person who is required to remit to a collector or to the Treasurer the tax imposed by this Act who fails to remit the tax is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than an amount equal to the amount of the tax that should have been remitted as determined under subsection (4).

Idem

(4) The Minister shall determine the amount of the tax referred to in subsections (1), (2) and (3) from such information as is available to him and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate.

Idem

(5) In any prosecution under subsection (1), (2) or (3) a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax that should have been collected or remitted, as the case may be, is *prima facie* evidence of the amount of tax that should have been collected or remitted and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Idem

(7) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax payable under this Act. 1973, c. 99, s. 20.

Offences

**21.**—(1) Every person who has failed to deliver a return as and when required by this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$25 for each day during which the default continues.

(2) Every person who contravenes section 16 is guilty of an offence and on conviction is liable to a fine of \$25 for each day during which the default continues. 1973, c. 99, s. 21. Idem

**22.** Every person who has,

False  
statements

- (a) made, participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a purchaser, retailer, wholesaler or collector;
- (c) made, assented to or acquiesced in the making of, false or deceptive entries or omitted, assented to or acquiesced in the omission, to enter a material particular in records or books of account of a purchaser, retailer, wholesaler or collector;
- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit any offence described in clauses (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been declared to be collectable or payable or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both. 1973, c. 99, s. 22.

**23.** Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$500. 1973, c. 99, s. 23.

General  
penalty

**24.** Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution

Officers,  
etc., of  
corporations

is guilty of an offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. 1973, c. 99, s. 24.

**Limitation**

**25.** An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose. 1973, c. 99, s. 25.

**Fines  
payable to  
Treasurer**

**26.** Fines imposed under this Act shall be paid to the Treasurer on behalf of Her Majesty the Queen in right of Ontario, and every penalty imposed by this Act is payable upon and in accordance with the demand of the Minister. 1973, c. 99, s. 26.

**Over-  
payments**

**27.**—(1) Where a person has remitted to the Treasurer a greater amount of money for a period than was required by this Act to be remitted for that period, or a greater amount than was payable by the person, the Treasurer shall either refund the overpayment or, at the option of the Minister, apply the amount of the overpayment to liability of the person with respect to a previous or subsequent period, in which latter case the Minister shall notify the person of such action.

**Idem**

(2) Where an amount in respect of an overpayment is refunded or applied on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing on the day the overpayment arose and ending with the day of refunding or application on other liability, unless the amount of interest so calculated is less than \$5 in which event no interest need be paid or applied under this subsection.

**Idem**

(3) Where by a decision of the Minister under section 13 or by a decision of the court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection (2) on the overpayment shall be computed at the rate prescribed by the regulations. 1973, c. 99, s. 27.

**Limitation**

(4) Notwithstanding subsection (1), no refund or application of an overpayment of tax shall be made unless, within two years following the date when such overpayment was first made, an application for the refund thereof is made to the Minister and it is established within such two years to the satisfaction of the Minister that the amount a refund of which is sought was not payable under this Act.

(5) Where, as the result of an assessment or re-assessment or the final decision of a court in proceedings commenced under section 14, the person assessed or re-assessed or the appellant, as the case may be, has overpaid the tax payable under this Act, the amount of such overpayment shall be refunded or applied in accordance with subsection (1) and notwithstanding the limitations contained in subsection (4). 1978, c. 77, s. 2. Exception

**28.** Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Treasurer, and the sections of this Act relating to the assessment (including objection and appeal therefrom) and collection of taxes apply with necessary modifications to the said amount. 1973, c. 99, s. 28. Refunds

**29.** Where, owing to special circumstances, it is considered inequitable that the whole amount of interest imposed by this Act be paid, the Minister may exempt a person from payment of the whole or any part of the interest. 1973, c. 99, s. 29. Relief from interest

**30.—**(1) Except as authorized by this section, no person employed by the Government of Ontario shall, Communication of information

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection (3), no person employed by the Government of Ontario shall be required, in connection with any legal proceedings, Officials not compellable as witnesses

(a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada; or Exceptions for legal proceedings

- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

Exception  
for internal  
adminis-  
tration

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception for  
objection or  
appeals, etc.

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) the person from whom the book, record, writing, return or other document was obtained; or
- (b) any person,

- (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

- (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause (a) or (b) or the agent of any such person authorized in writing in that behalf.

(6) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

Exception  
for tax  
enforcement  
in other  
jurisdictions

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act. 1973, c. 99, s. 30.

**31.** For the purpose of simplifying compliance with this Act and the administration and collection of the tax imposed by this Act, and in order to provide for reciprocal arrangements to settle competing claims for tax on the acquisition and use of gasoline or aviation fuel by persons carrying on business in more than one province or territory of Canada, the Lieutenant Governor in Council may, upon the recommendation of the Minister and on such terms and conditions as are considered necessary and expedient, enter into an agreement with any province or territory of Canada that tax paid to one jurisdiction on the acquisition there of gasoline or aviation fuel that is transferred to the other jurisdiction and that becomes liable to tax in such other jurisdiction under this Act or any similar legislation in force in such other jurisdiction may be paid by one jurisdiction to the other in reduction of the liability to such tax arising in the jurisdiction receiving such payment and in lieu of refunding such tax to the person who paid it and who became liable for a similar tax in such other jurisdiction. 1978, c. 77, s. 3.

Inter-  
provincial  
settlement  
of competing  
tax claims

**32.** The Lieutenant Governor in Council may make regulations,

Regulations

- (a) providing for the collection of the tax imposed by this Act;
- (b) providing for the accounting for and paying over of any sums of money collected by or payable to the persons charged with the collection of the tax imposed by this Act and regulating the time and manner of such accounting and payment;
- (c) prescribing the returns and statements to be made by importers, manufacturers, wholesalers, retailers and purchasers of gasoline or aviation fuel, the information to be given in such returns and statements and by whom and in what manner they shall be made, and prescribing the records to be kept by such persons;
- (d) excluding products from this Act;
- (e) designating products to be aviation fuel;
- (f) exempting any class of persons from the payment of the tax imposed by this Act;
- (g) providing for the refund of the tax paid under this Act, or any portion thereof, to any purchaser or class of purchasers and prescribing the records and material to be furnished upon any application for a refund;
- (h) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (i) prescribing the rates of interest payable under this Act;
- (j) prescribing forms to be used for the purpose of this Act or the regulations;
- (k) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (l) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

## CHAPTER 187

## General Sessions Act

1. In this Act,

Interpre-  
tation

(a) "chief judge" means the Chief Judge of the County and District Courts;

(b) "court" means a court of general sessions of the peace. R.S.O. 1970, c. 191, s. 1.

2. The courts of general sessions of the peace have juris- Jurisdiction  
diction to try all criminal offences except the offences men-  
tioned in subsection 413 (2) of the *Criminal Code* (Can- R.S.C. 1970,  
ada). R.S.O. 1970, c. 191, s. 2. c. C-34

3. In each year the sittings of each court of general ses- Sittings  
sions of the peace shall be held at such time or times as is  
ordered by the chief judge, and the order of the chief judge  
shall be deemed to be a regulation to which the *Regulations Act* R.S.O. 1980,  
applies. R.S.O. 1970, c. 191, s. 3. c. 446

4. In any county, two or more concurrent sittings of the Concurrent  
court may be held for the trial of cases with or without a sittings  
jury and the hearing of appeals. R.S.O. 1970, c. 191, s. 4.

5. The sittings of the court shall be held in the county Place of  
town of the county, unless the chief judge authorizes the sittings  
holding of the sittings at some other place in the county.  
R.S.O. 1970, c. 191, s. 5.

6. In the provisional judicial districts, sittings of the court Sittings in  
shall be held at the same time and place as the sittings of provisional  
the district courts for the trial of issues of fact and assess- judicial  
ment of damages with or without a jury. R.S.O. 1970, districts  
c. 191, s. 6.

7. A judge of the county or district court, as the case may be, Who may  
or an acting judge shall be the chairman of the court and shall preside  
preside at the sittings thereof. R.S.O. 1970, c. 191, s. 7;  
1979, c. 66, s. 16.

8. Where a judge is present, it is not necessary in order to Presence of  
constitute the court that a justice of the peace be present. unnecessary  
R.S.O. 1970, c. 191, s. 8.

Adjourn-  
ment of  
sittings

**9.**—(1) Where a judge is unable to hold the sittings at the time appointed, the sheriff or his deputy may, by proclamation, adjourn the court to any hour on the following day to be by him named, and so from day to day until a judge is able to hold the court or until he receives other directions from the judge or from the chief judge.

Notice

(2) The sheriff shall forthwith give notice of such adjournment to the chief judge. R.S.O. 1970, c. 191, s. 9.

Rules, fees,  
forms

**10.** Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may,

- (a) make rules for regulating the practice and procedure in the county and district courts;
- (b) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts;
- (c) prescribe forms for use in such courts. R.S.O. 1970, c. 191, s. 10; 1979, c. 49, s. 3.

## CHAPTER 188

## General Welfare Assistance Act

## 1. In this Act,

Interpre-  
tation

- (a) "applicant" means a person who applies or on whose behalf an application is made for assistance;
- (b) "assistance" means assistance of a class provided under this Act and the regulations;
- (c) "Director" means the Director of the Income Maintenance Branch of the Ministry of Community and Social Services;
- (d) "field worker" means a person employed as such by the Ministry of Community and Social Services or any other employee of the Ministry whom the Minister designates as such;
- (e) "Minister" means the Minister of Community and Social Services;
- (f) "municipal welfare administrator" means a person appointed as such for the purposes of this Act;
- (g) "municipality" means a city, separated town, town, village, township or improvement district, and, where the council of a county has appointed a municipal welfare administrator under subsection 4 (3), means the county together with any municipality that forms part of the county for the purpose of the administration of assistance;
- (h) "recipient" means a person to whom assistance is provided;
- (i) "recipient of a governmental benefit" means a person,
  - (i) who is a pensioner under the *Old Age Security Act* (Canada), or

R.S.C. 1970,  
c. O-6

R.S.O. 1980,  
c. 151.

(ii) who is a beneficiary under the *Family Benefits Act*, or

R.S.O. 1980,  
c. 525

(iii) who is receiving a maintenance allowance under the *Vocational Rehabilitation Services Act*,

and includes such other classes of persons as the regulations prescribe;

(j) "regional welfare administrator" means a person employed as such by the Ministry of Community and Social Services or designated as such by the Minister;

(k) "regulations" means the regulations made under this Act;

(l) "supplementary aid" means the assistance that may be paid to a recipient of a governmental benefit;

(m) "unemployable person" means a person who is certified by a legally qualified medical practitioner as being unable to engage in remunerative employment by reason of physical or mental disability;

(n) "unemployed person" means a person who is able to engage in remunerative employment and who is not so engaged at the time he makes application for assistance. R.S.O. 1970, c. 192, s. 1; 1972, c. 1, ss. 1, 19 (3), *revised*.

Ontario-  
municipal  
agreements

2. The Minister, with the approval of the Lieutenant Governor in Council, may make agreements with any municipality and any municipality may make agreements with the Minister respecting the payment by the Province to the municipality or by the municipality to the Province of contributions to the cost of public works measures undertaken by the municipality or by the Province to relieve unemployment in the municipality. R.S.O. 1970, c. 192, s. 2.

Provincial  
adminis-  
tration

3. The Director shall exercise general supervision over the administration of this Act and the regulations and shall advise municipal welfare administrators, regional welfare administrators and others as to the manner in which their duties under this Act are to be performed. R.S.O. 1970, c. 192, s. 3.

Appoint-  
ment of  
municipal  
welfare  
adminis-  
trator

4.—(1) The council of a municipality may, with the approval of the Minister, appoint a municipal welfare administrator.

(2) The municipal welfare administrator shall receive applications for assistance and shall determine the eligibility of each applicant for assistance, and, where the applicant is eligible, shall determine the amount of the assistance and direct provision thereof, and he may from time to time vary any amount so determined.

Duties  
of municipal  
welfare  
adminis-  
trator

(3) Instead of the municipalities that are within a county for municipal purposes administering assistance independently of one another, the council of the county may, with the approval of the Minister, appoint a municipal welfare administrator to administer assistance in all such municipalities, except that any such municipality that has a population of more than 5,000 according to its last revised assessment roll may, by agreement with the county and with the approval of the Minister, appoint a municipal welfare administrator to administer assistance in that municipality independently of the county.

County  
adminis-  
tration

(4) Any municipality within a county but not forming part of the county for municipal purposes may, with the approval of the council of the county and the Minister, form part of the county for the purpose of the administration of assistance. R.S.O. 1970, c. 192, s. 4.

Idem

5. The Director, every municipal welfare administrator or any of the assistants of the municipal welfare administrator authorized by the council of the municipality, every regional welfare administrator, every welfare allowances officer and every field worker is, in the performance of his duties under this Act, a commissioner for taking affidavits within the meaning of the *Commissioners for taking Affidavits Act*. R.S.O. 1970, c. 192, s. 5.

Power  
to take  
affidavits

R.S.O. 1980,  
c. 75

6. A municipal welfare administrator or a regional welfare administrator may, in writing, authorize any person employed on his staff to exercise under his supervision and direction any of the powers conferred or the duties imposed on him under this Act or the regulations. 1971, c. 50, s. 44 (1).

Adminis-  
trator may  
delegate  
powers and  
duties

7.—(1) A municipality shall provide assistance in accordance with the regulations to any person in need who resides in the municipality and who is eligible for such assistance.

Duty of  
municipal-  
ities  
to provide  
assistance

(2) A municipality may provide assistance in accordance with the regulations to any other person who resides in the municipality and who is eligible for such assistance. R.S.O. 1970, c. 192, s. 6.

Idem

Provincial  
grants and  
subsidies to  
municipalities

**8.**—(1) There may be paid to any class of municipality prescribed by the regulations out of moneys appropriated therefor by the Legislature grants and subsidies for any of the purposes of this Act in such amounts and under such conditions as the regulations prescribe.

Provincial  
subsidies for  
costs of  
adminis-  
tration  
R.S.O. 1980,  
c. 122

(2) There may be paid to any class of municipality prescribed by the regulations and to district welfare administration boards established under the *District Welfare Administration Boards Act* out of moneys appropriated therefor by the Legislature subsidies for the costs of the administration of welfare services as defined in that Act, or of assistance, as the case may be, in such amounts and under such conditions as the regulations prescribe. R.S.O. 1970, c. 192, s. 7.

Applications  
in pre-  
scribed form  
required

**9.** Except in cases of emergency as provided for in the regulations, assistance shall be provided only after the receipt by the municipal welfare administrator or the regional welfare administrator, as the case may be, of an application therefor in the prescribed form. R.S.O. 1970, c. 192, s. 8.

Welfare  
adminis-  
trator  
defined

**10.**—(1) In this section and section 11, “welfare administrator” means municipal welfare administrator or regional welfare administrator, as the case may be.

Suspension,  
etc., of  
assistance

(2) A welfare administrator may refuse to provide or may suspend or cancel assistance under this Act where,

- (a) the applicant or recipient is not or ceases to be entitled thereto or eligible therefor under this Act or the regulations;
- (b) the applicant or recipient fails to provide to the welfare administrator or his representative the information required to determine initial or continuing entitlement to or eligibility for assistance or the amount of the assistance; or
- (c) any other ground for refusal, suspension or cancellation specified in the regulations exists.

Opportunity  
to make  
submissions

(3) Where practicable, a welfare administrator shall afford an applicant for or recipient of assistance prescribed as general in the regulations an opportunity to make submissions before suspension, cancellation or refusal of the assistance to show why such action should not be taken, and the *Statutory Powers Procedure Act* does not apply to proceedings of a welfare administrator under this section. 1971, c. 50, s. 44 (2).

R.S.O. 1980,  
c. 484

**11.**—(1) In this section, “board of review” means the Social Assistance Review Board under the *Ministry of Community and Social Services Act*. 1974, c. 96, s. 1 (1), *part*. Interpretation  
R.S.O. 1980,  
c. 273

(2) Any applicant or recipient affected by a decision of a welfare administrator made under this Act or the regulations in respect of the payment of a class of assistance prescribed as general in the regulations may by notice mailed within thirty days after he receives notice of the decision to the chairman of the board of review request a hearing and review of the decision by the board, and an applicant or recipient who so mails or delivers such request is entitled to a hearing by the board. 1971, c. 50, s. 44 (3), *part*; 1974, c. 96, s. 1 (1), *part*, (2). Application  
for review

(3) The board of review may extend the time for giving notice by an applicant or recipient under subsection (1), either before or after expiration or the time therein specified, where it is satisfied there are *prima facie* grounds for claiming relief pursuant to a hearing or for appeal and that there are reasonable grounds for applying for the extension. 1971, c. 50, s. 44 (3), *part*. Extension of  
time for  
requesting  
hearing

(4) Where an applicant or a recipient has filed a notice requesting a hearing under subsection (1), the provisions of sections 14, 15, 16 and 18 of the *Family Benefits Act* and section 12 of the *Ministry of Community and Social Services Act* apply with necessary modifications to a hearing and review by the board of review under this Act and appeals therefrom. 1971, c. 50, s. 44 (3), *part*; 1974, c. 96, s. 1 (3). Application  
of  
R.S.O. 1980,  
cc. 151, 273

**12.** A municipal welfare administrator or a regional welfare administrator may recover from a recipient any sum paid to him by way of assistance to which he was not entitled under this Act or in excess of any amount to which he was so entitled whether by reason of non-disclosure of facts, misrepresentation or fraud or for any other cause disentitling him to such assistance by reducing or suspending any assistance payable to the recipient or by proceedings to recover such sum as a debt due to the municipality or to the Crown, as the case may be, in any court of competent jurisdiction. 1971, c. 50, s. 44 (3) *part*. Recovery  
where  
recipient not  
entitled to  
assistance

**13.** A municipality or the Province may provide assistance by way of supplementary aid to or on behalf of recipients of governmental benefits. R.S.O. 1970, c. 192, s. 10. Supple-  
mentary  
aid

**14.** The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing classes of assistance and the items to be included in any such class and the manner of computing the amount or cost thereof and providing for contributions to or reimbursement of sums expended therefor and prescribing the maximum amounts or percentages thereof;
- (b) prescribing classes of persons who are eligible for assistance and fixing standards of eligibility;
- (c) defining persons in need or prescribing classes of such persons;
- (d) defining residence for the purposes of establishing eligibility for assistance, liability to provide assistance, a right to a contribution to the cost of assistance or a right to reimbursement of the whole or any part of the cost of assistance, or for any other purposes of this Act and prescribing the circumstances in which any such definition is applicable;
- (e) supplementing the liabilities mentioned in section 7, prescribing the circumstances under which there is a liability to provide assistance, a right to a contribution or a right to reimbursement and providing procedures therefor and for determining the maximum amounts of percentages thereof;
- (f) prescribing classes of municipalities to which grants or subsidies may be paid by the Province;
- (g) prescribing classes of grants and subsidies from the Province, the methods of determining the amounts of any grant or subsidy, providing for the manner in which and the intervals at which payments shall be made, for the suspension or withholding of the grants and subsidies or any part thereof and for making any deductions from any such grant or subsidy;
- (h) providing for the recovery by the Province from a municipality of any amounts of assistance paid by the Province for which the municipality is liable or for the recovery by the Province or a municipality from a recipient of assistance or from his estate of amounts of assistance paid by the Province or municipality, and prescribing the circumstances and manner in which any such recovery may be made;

- (i) adding to the classes of persons who are recipients of governmental benefits;
- (j) providing for the payment of supplementary aid to recipients of governmental benefits, prescribing the circumstances under which and by whom it is payable, and providing for contributions to or reimbursement of amounts expended therefor and prescribing the maximum amounts or percentages thereof;
- (k) prescribing the amounts of money that may be paid by the Province in respect of the burial of indigent persons who were residing in territory without municipal organization;
- (l) governing the manner of making application for assistance;
- (m) providing for the making of investigations for the purposes of this Act of applicants for or recipients of assistance;
- (n) prescribing the material or proof of any fact, including evidence under oath, that is to be furnished before assistance is provided or while assistance is being provided;
- (o) prescribing the manner in which and the intervals at which assistance is to be provided;
- (p) prescribing additional powers and duties of the Director, regional welfare administrators and municipal welfare administrators;
- (q) prescribing the records to be kept and the claims and returns to be made to the Minister by municipalities and prescribing the times within which and the manner in which such claims or returns shall be made;
- (r) providing for the whole or part of the cost of providing medical and dental services to recipients of assistance and their dependants or any class thereof;
- (s) defining expressions for the purposes of the regulations;
- (t) prescribing forms and providing for their use;

- (u) respecting any matter considered necessary or advisable to carry out the intent and purpose of this Act. R.S.O. 1970, c. 192, s. 11.

Interpre-  
tation

15.—(1) In this section,

R.S.C. 1970,  
c. 1-6

- (a) “band”, “council of a band”, “member of a band” and “reserve” have the same meaning as in the *Indian Act* (Canada);

- (b) “welfare administrator for a band” means a person appointed as such for the purposes of this Act.

Appointment  
of welfare  
adminis-  
trators for  
Indian bands

- (2) The council of a band that is approved for the purposes of this Act may, with the approval of the Minister, appoint a member of the band as the welfare administrator for the band.

Provisions  
applicable

- (3) The provisions of this Act that apply to a municipal welfare administrator apply with necessary modifications to the welfare administrator for a band.

County  
adminis-  
tration

- (4) A band may, with the approval of the council of a county and the Director, form part of the county for the purpose of the administration of assistance.

Duty of  
council of  
band to  
provide  
assistance

- (5) The council of a band that is approved for the purposes of this Act shall provide, in accordance with the regulations, assistance to the members thereof who are persons in need and who reside on the reserve of the band and who are eligible for assistance and may provide assistance to other persons in need who reside on the reserve and who are eligible for assistance if the council of the band approves the provision of assistance to such persons.

Supple-  
mentary  
aid

- (6) The council of a band that is approved for the purposes of this Act may provide assistance by way of supplementary aid to or on behalf of recipients of governmental benefits who reside on the reserve of the band.

Regulations

- (7) The Lieutenant Governor in Council may make regulations,

- (a) providing for the recovery by the Province from the council of a band of any amounts of assistance paid by the Province for which the council of the band is liable or for recovery by the council of a band from a recipient of assistance paid by the council of the band, and prescribing the circumstances and manner in which any such recovery may be made;

- (b) specifying bands that are approved for the purposes of this Act.

(8) There may be paid to the council of a band that is approved for the purposes of this Act, out of moneys appropriated therefor by the Legislature, grants and subsidies for any of the purposes of this Act in such amounts and under such conditions as the regulations prescribe. R.S.O. 1970, c. 192, s. 12.

**16.**—(1) No person shall knowingly obtain or receive assistance that he is not entitled to obtain or receive under this Act and the regulations. <sup>Offence</sup>

(2) No person shall knowingly aid or abet another person to obtain or receive assistance that such other person is not entitled to obtain or receive under this Act and the regulations. <sup>Idem</sup>

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$100 or to imprisonment for a term of not more than three months, or to both. R.S.O. 1970, c. 192, s. 13. <sup>Idem</sup>



## CHAPTER 189

## Gold Clauses Act

**1.** Every obligation heretofore or hereafter incurred, and whether it is due, accruing due or past due, that gives or purports to give the obligee a right to require payment in gold or in a particular kind or standard of coin or currency, or in an amount of money of Canada or elsewhere measured in gold or in a particular kind or standard of coin or currency is discharged upon payment, dollar for dollar, in any coin or currency, that at the time of payment is legal tender at the place of payment named in such obligation for public and private debts. R.S.O. 1970, c. 193, s. 1. <sup>Discharge of obligations</sup>

**2.** Notwithstanding that any obligation heretofore or hereafter incurred, whether it is due, accruing due or past due, gives or purports to give the obligee the right to require payment in gold or in a particular kind or standard of coin or currency, or in an amount of money of Canada or elsewhere measured in gold or in a particular kind or standard of coin or currency, no action shall be brought or maintained to enforce such obligation or to enforce any judgment obtained outside Ontario based on any such obligation, except to the amount of the face value of such obligation, dollar for dollar, in any coin or currency that at the time of payment is legal tender at the place of payment named in such obligation for public and private debts. R.S.O. 1970, c. 193, s. 2. <sup>No action to be brought</sup>

**3.** This Act applies to all obligations governed by the law of Ontario, including obligations of the Crown. R.S.O. 1970, c. 193, s. 3. <sup>Scope of Act</sup>



## CHAPTER 190

Government Contracts Hours and  
Wages Act

## 1. In this Act,

Interpre-  
tation

- (a) "fair wages" means such wages as are generally accepted as current for competent workmen in the locality in which the work is being performed for the character or class of work in which such workmen are respectively engaged, but shall in all cases be such wages as are fair and reasonable;
- (b) "Government of Ontario" includes every ministry thereof and every commission or board created by any Act of the Legislature;
- (c) "Minister" means the Minister of Labour or such other member of the Executive Council as is for the time being charged with the administration of this Act;
- (d) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 194, s. 1; 1972, c. 1, s. 2.

2.—(1) Every contract entered into with the Government of Ontario for the construction, remodelling, renewal, repair or demolition of any building or work is subject to the following conditions respecting wages and hours:

Government  
contracts  
for work  
subject to  
certain  
conditions

1. All persons in the employ of the contractor, sub-contractor or any other person doing or contracting to do the whole or any part of the work contemplated by the contract shall during the continuance of the work be paid fair wages.
2. The working hours of persons while so employed shall not exceed eight hours per day or forty-four hours per week, except in such special cases as the Lieutenant Governor in Council otherwise provides, or except in such cases of emergency as may be approved by the Minister.

## Exception

(2) This section does not apply to the purchase of materials, supplies or equipment for use in the work contemplated under any contract of sale and purchase. R.S.O. 1970, c. 194, s. 2.

Wages and  
hours where  
Government  
aid granted

3.—(1) Where a grant or payment of any public moneys of Ontario is authorized or made by way of contribution, subsidy, loan, advance or guarantee for or in aid of the construction, remodelling, renewal, repair or demolition of any building or work, whether the grant or payment is to be received by any municipal or other body or person whatever, the wages and hours of all workmen employed on the work shall be those set forth in subsection 2 (1).

## Exception

(2) This section does not apply to the purchase of materials, supplies or equipment for use in the work contemplated under any contract of sale and purchase. R.S.O. 1970, c. 194, s. 3.

## Offences

4. Every contractor, subcontractor and municipal or other body and every person who is responsible, directly or indirectly, for the payment of wages, who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500. R.S.O. 1970, c. 194, s. 4.

## Regulations

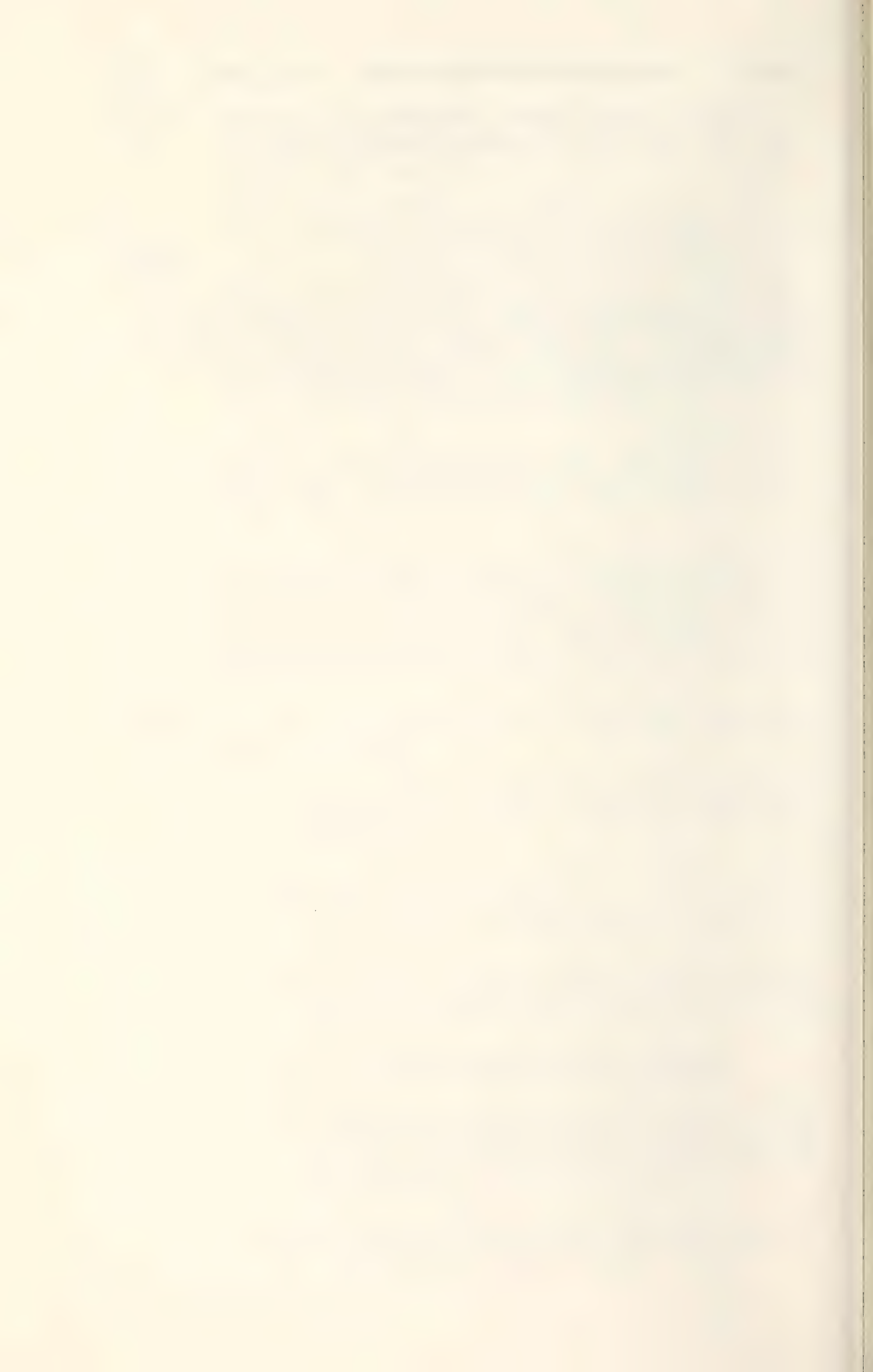
5. The Lieutenant Governor in Council may make regulations providing for,

- (a) the method of determining what are fair wages and the preparation and use of schedules of rates relating thereto;
- (b) rates of wages for overtime;
- (c) classification of employment or work;
- (d) the persons or classes of persons who may be employed in the performance of any work mentioned in this Act;
- (e) the publication and posting of wage schedules;
- (f) the payment of wages to employees in case of default by the contractor or other party charged with the payment and recovery thereof from the contractor or other party;
- (g) the keeping of proper books and records and the examination and inspection thereof;

- (h) the furnishing of such information as is required by the Minister to ensure compliance with this Act;
- (i) any matter necessary or advisable to carry out effectively the intent and purpose of this Act and the regulations. R.S.O. 1970, c. 194, s. 5.

**6.** This Act and the regulations shall be read and construed subject to the *Industrial Standards Act*, Part IV of the *Employment Standards Act* and the *Ministry of Transportation and Communications Creditors Payment Act* and any regulations and schedules made thereunder. R.S.O. 1970, c. 194, s. 6.

Act to be  
subject to  
provisions of  
R.S.O. 1980,  
cc. 216, 137,  
290



## CHAPTER 191

## Grain Elevator Storage Act

## 1. In this Act,

Interpre-  
tation

- (a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980, c. 270
- (b) "chief inspector" means the chief inspector appointed under this Act;
- (c) "farm produce" means beans, cereal grains, corn or grass seeds produced in Ontario;
- (d) "grain elevator" means any premises on which farm produce is stored;
- (e) "grain elevator operator" means a person who receives or offers to receive farm produce for storage;
- (f) "grain storage receipt" means a receipt in the form prescribed by the regulations and issued by a grain elevator operator in respect of farm produce in storage;
- (g) "licence" means a licence under this Act;
- (h) "Minister" means the Minister of Agriculture and Food;
- (i) "regulations" means the regulations made under this Act;
- (j) "stored", when used with respect to farm produce, means delivered to a grain elevator upon terms that the ownership is to remain in the deliverer, and "storage" has a corresponding meaning;
- (k) "weigh-ticket" means a receipt issued by a grain elevator operator to a producer in the form prescribed by the regulations. R.S.O. 1970, c. 195, s. 1; 1973, c. 88, s. 1; 1978, c. 100, s. 10 (1).

Delivery  
for  
storage

**2.**—(1) Subject to an agreement in writing to the contrary, where farm produce is delivered to an elevator and a grain storage receipt is issued, the delivery of the farm produce shall be deemed to be for storage.

Receipt  
where grain  
not for  
storage

(2) A grain elevator operator shall not issue a grain storage receipt for grain delivered upon terms other than for storage unless he marks on the receipt in bold print that the receipt is not a grain storage receipt under this Act. R.S.O. 1970, c. 195, s. 2.

Contract for  
sale to be  
written

**3.** A contract for the sale of farm produce to the operator of the grain elevator in which it is stored is not enforceable by action unless the contract is written on the grain storage receipt issued for the farm produce and signed by the parties. R.S.O. 1970, c. 195, s. 3.

Storage  
charges

**4.** Unless it is agreed in writing to the contrary, farm produce stored in a grain elevator is not subject to any lien, charge or set-off other than for storage charges in respect of the farm produce. R.S.O. 1970, c. 195, s. 4.

R.S.O. 1980,  
c. 150, s. 2,  
not to apply

**5.** Section 2 of the *Factors Act* does not apply to farm produce in possession of a grain elevator operator for storage, or to a document of title thereto. R.S.O. 1970, c. 195, s. 5.

Appoint-  
ment of chief  
inspector  
and  
inspectors

**6.**—(1) The Minister may appoint a chief inspector and such other inspectors as he considers necessary to enforce this Act and the regulations.

Certificate  
of appoint-  
ment

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature and authority of the Minister.

Powers of  
inspector

(3) Subject to subsections (4), (5), (6) and (7) an inspector may, for the purpose of carrying out his duties under this Act, upon production of a certificate of his appointment,

- (a) enter any grain elevator including any building used in connection therewith that he believes on reasonable and probable grounds are used by a grain elevator operator and inspect such grain elevator or building and any grain stored and books, records or documents pertaining thereto; and
- (b) demand the production or furnishing by the owner or custodian thereof of any books, records, documents or extracts therefrom relating to grain stored by a grain elevator operator.

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, an inspector shall not enter any part of a dwelling without the consent of the occupant unless, Entry of dwellings R.S.O. 1980, c. 400

(a) the occupant is licensed under this Act; and

(b) he has reasonable grounds for believing that the occupant is using such part for storing books, records or documents that have not been produced or furnished by the occupant in accordance with a demand under clause (3) (b).

(5) An inspector shall exercise his powers under subsection (3) at all reasonable times, but nothing in this section affects the issuance and execution of a warrant under section 142 of the *Provincial Offences Act*. When powers to be exercised

(6) Where an inspector demands the production or furnishing of books, records, documents or extracts therefrom, the person having custody thereof shall produce or furnish them to the inspector, and the inspector may remove and detain them for the purpose of making, or causing to be made, one or more copies thereof if such copies are made with reasonable despatch, and the inspector shall forthwith thereafter return them to the person who produced or furnished them. Production of records, etc.

(7) Where a copy of a book, record, document or extract has been made under subsection (6), a copy purporting to be certified by the inspector to be a copy made pursuant to subsection (6) is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way. Certification of copy

(8) No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information. 1973, c. 88, s. 2, *part*. Obstruction of inspector

7.—(1) No person shall receive or offer to receive farm produce for storage at a grain elevator unless he is the holder of a licence as a grain elevator operator issued by the chief inspector in respect of the grain elevator. Grain elevator operator's licence

(2) The chief inspector shall issue a licence as a grain elevator operator to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that, Issue of licence

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;

- (b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;
- (c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;
- (e) where the applicant was previously the holder of a licence and,
  - (i) such licence was revoked, or
  - (ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence, under this Act, the grounds for such cancellation or conviction warrant a refusal to issue the licence; or
- (f) the applicant is not financially responsible.

Renewal  
of licence

(3) Subject to section 8, the chief inspector shall renew a licence on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1973, c. 88, s. 2, *part*.

Suspension,  
revocation or  
non-renewal  
of licence

8.—(1) The chief inspector may refuse to renew or may suspend or revoke a licence if, after a hearing, he is of the opinion that,

- (a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing, and such contravention warrants such refusal to renew, suspension or revocation of the licence;

- (c) the licensee has failed to provide promptly and accurately a grain storage receipt to a producer from whom he received farm produce for storage;
- (d) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (e) any ground for refusing to issue a licence under subsection 7 (2) exists.

(2) Where within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the chief inspector on his application for renewal. 1973, c. 88, s. 2, *part*.

Licence  
deemed to  
continue  
in force

9.—(1) The notice of a hearing by the chief inspector under section 7 or 8 shall afford the applicant or licensee a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Notice of  
hearing

(2) An applicant or licensee who is a party to proceedings in which the chief inspector holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1973, c. 88, s. 2, *part*.

Documents  
to be made  
available

10. Where the chief inspector has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing, he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the chief inspector shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1973, c. 88, s. 2, *part*.

Chief  
inspector  
may vary  
or rescind  
decision

11.—(1) Where the chief inspector refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the chief inspector and filed with the Board within fifteen days after receipt of the decision of the chief inspector, appeal to the Board.

Appeal to  
Board

Extension  
of time  
for appeal

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Disposal  
of appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the chief inspector or direct the chief inspector to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the chief inspector.

Effect of  
decision  
pending  
disposal  
of appeal

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the chief inspector, unless the chief inspector otherwise directs, the decision of the chief inspector is effective until the appeal is disposed of. 1973, c. 88, s. 2, *part*.

Parties

**12.—**(1) The chief inspector, the appellant and such other persons as the Board may specify are parties to the proceeding before the Board under this Act.

Members  
making  
decision  
not to have  
taken part  
in investi-  
gation, etc.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording  
of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings  
of fact

R.S.O. 1980,  
c. 484

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Only  
members  
at hearing  
to par-  
ticipate  
in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present

throughout and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1973, c. 88, s. 2, *part*.

**13.**—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court. Appeal to court

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. Minister entitled to be heard

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal. Record to be filed in court

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the chief inspector to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the chief inspector or the Board. Powers of court on appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1973, c. 88, s. 2, *part*. Effect of decision of Board pending disposal of appeal

**14.**—(1) Upon delivery of farm produce for storage, the grain elevator operator shall issue a grain storage receipt. Grain storage receipt

(2) No person shall issue or receive more than one grain storage receipt in respect of the same farm produce. R.S.O. 1970, c. 195, s. 9. Not more than one receipt

**15.**—(1) Where a producer delivers for storage farm produce in more than one delivery, the grain elevator operator shall, for each delivery, issue to the producer a weigh-ticket. Weigh-ticket

(2) Where a grain elevator operator issues weigh-tickets under subsection (1), he shall issue a grain storage receipt immediately after the last delivery of the farm produce and upon the surrender of the weigh-tickets, but in no case later than ten days from the date of issue of the weigh-ticket first issued. R.S.O. 1970, c. 195, s. 10. Surrender of weigh-tickets for receipt

Copies of  
weigh-  
tickets

**16.**—(1) Every grain elevator operator shall keep copies of all weigh-tickets issued to each producer in a separate account kept for that purpose only, until he issues grain storage receipts for the full amount of the weigh-tickets.

Records

(2) No person shall issue a grain storage receipt or weigh-ticket without making and keeping a complete record of the matters recorded thereon. R.S.O. 1970, c. 195, s. 11.

Signing of  
receipts

**17.**—(1) No person shall sign a grain storage receipt on behalf of a grain elevator operator except a person designated by him.

Report  
to chief  
inspector

(2) A grain elevator operator shall report promptly to the chief inspector the name and address of any person designated by him to sign receipts. R.S.O. 1970, c. 195, s. 12.

Insurance

R.S.O. 1980,  
c. 218

**18.**—(1) Every licensed grain elevator operator shall insure with an insurer licensed under the *Insurance Act* all farm produce stored by him for which grain storage receipts and weigh-tickets have been issued, against loss or damage by fire, lightning, explosion occurring on the grain elevator premises, windstorm and hail, to the full market value of the farm produce in storage.

Payment of  
insurance

(2) Every contract of insurance in which the coverage referred to in subsection (1) is included shall provide that payment thereunder shall not be made without the consent of the chief inspector. R.S.O. 1970, c. 195, s. 13.

Operator to  
supply  
particulars  
of insurance

**19.** Every grain elevator operator shall furnish to the chief inspector in such form and at such times as he requires a statement showing the full market value of farm produce in storage at his grain elevator and the particulars of insurance under section 18. R.S.O. 1970, c. 195, s. 14.

Storage not  
to exceed  
capacity

**20.**—(1) Subject to subsection (2), no grain elevator operator shall receive for storage any amount of farm produce greater than the storage capacity of his grain elevator.

Contract for  
storage in  
another  
elevator

(2) A grain elevator operator may, under *bona fide* contract for storage facilities at the grain elevators of other grain elevator operators licensed under this Act or any Act of the Parliament of Canada, or other person on premises acceptable to the chief inspector, store therein farm produce received for storage at his grain elevator. R.S.O. 1970, c. 195, s. 15.

**21.** Every grain elevator operator shall at all times have in his grain elevator or in other storage under subsection 20 (2) such amounts of farm produce of each kind and grade as will at least equal the total amounts of outstanding grain storage receipts and weigh-tickets issued by him. <sup>Farm produce in storage to correspond to receipts</sup> R.S.O. 1970, c. 195, s. 16.

**22.** Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for a first offence and to a fine of not more than \$5,000 or to a term of imprisonment of not more than one year for any subsequent offence. <sup>Offence</sup> R.S.O. 1970, c. 195, s. 18.

**23.** The Lieutenant Governor in Council may make regula- <sup>Regulations</sup> tions,

- (a) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;
- (b) prescribing the terms and conditions on which licences are issued;
- (c) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 8;
- (d) prescribing forms and providing for their use;
- (e) prescribing services that may be performed and acts that may be done by the chief inspector to protect the property of the producers of farm produce received for storage at a grain elevator where the licence of the grain elevator operator has not been renewed or has been suspended or revoked;
- (f) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1973, c. 88, s. 4.



## CHAPTER 192

## Guarantee Companies Securities Act

1. In this Act, "guarantee company" means a corporation approved by the Lieutenant Governor in Council and empowered to grant guarantees, bonds, policies or contracts for the integrity and fidelity of employed persons, or in respect of any legal proceedings or for other like purposes. R.S.O. 1970, c. 196, s. 1.

Interpretation

2. Where a judge, functionary, officer or person is entitled or required to take security by bond with sureties, he may in lieu thereof take the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1970, c. 196, s. 2.

Bonds of guarantee company may be taken by officers and others

3. Where a person is required to give security by bond with sureties, he may in lieu thereof furnish the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1970, c. 196, s. 3.

Persons may give bond of guarantee company

4. The guarantee company shall not be bound or required to justify. R.S.O. 1970, c. 196, s. 4.

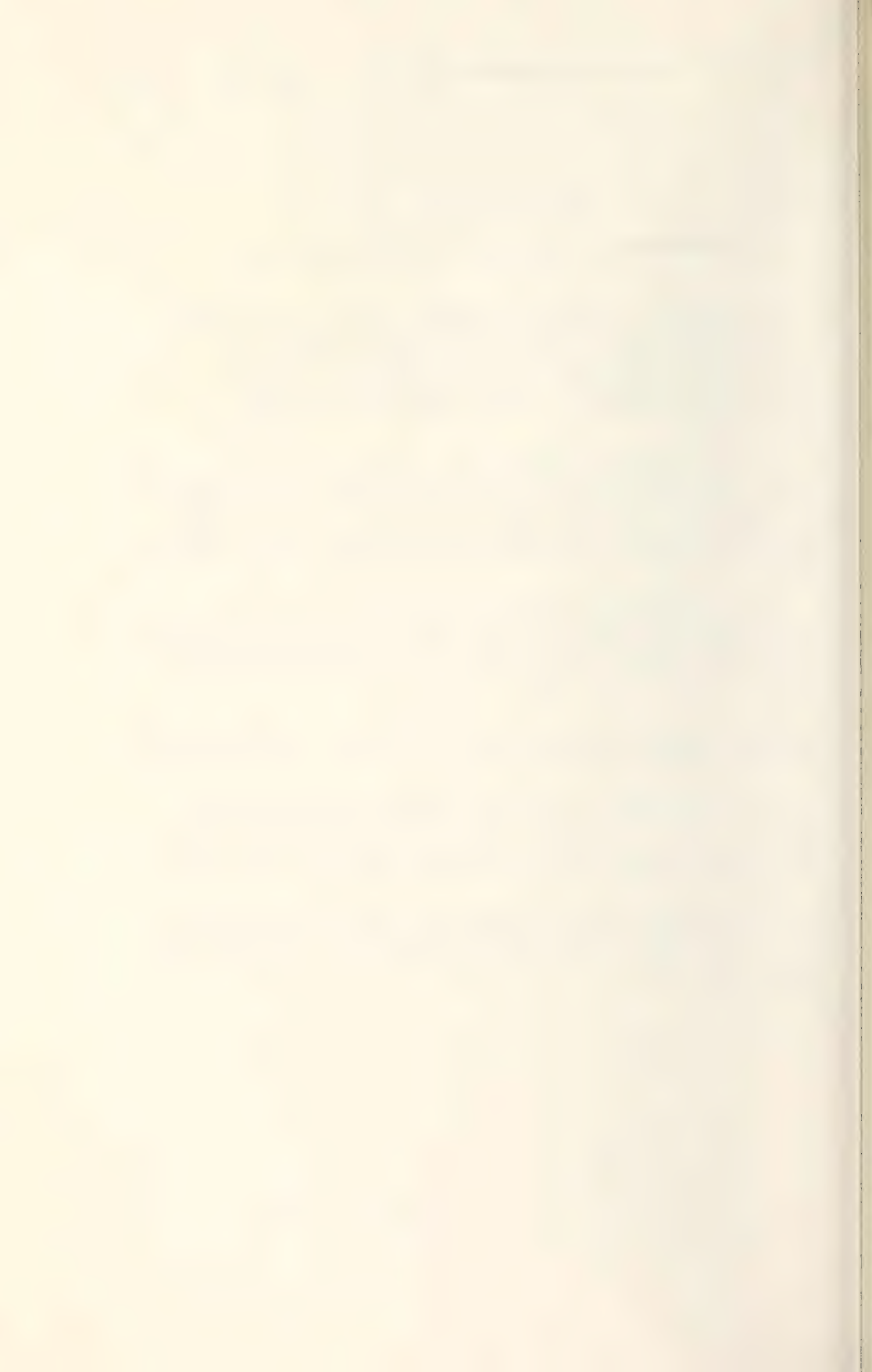
Justification not required

5. The bond, policy or guarantee contract of a guarantee company may be taken instead of or in substitution for any existing security if the judge, functionary, officer or person mentioned in section 2 so directs. R.S.O. 1970, c. 196, s. 5.

Bond of company may be substituted for other bonds

6. The interim receipt of a guarantee company may be accepted in lieu of a bond, policy or guarantee contract, but the latter shall be furnished within one month. R.S.O. 1970, c. 196, s. 6.

Interim receipt in lieu of bond



## CHAPTER 193

## Habeas Corpus Act

1.—(1) Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, court of general sessions of the peace or other court of record is confined or restrained of his liberty, a judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the judge so awarding the writ, or before any judge of the Supreme Court. R.S.O. 1970, c. 197, s. 1 (1); R.S.O. 1970, c. 197, s. 12 (1).

In what cases *hab. corp. ad subjiciendum* may be awarded, and by whom

(2) Notice in writing of every application for a writ of *habeas corpus ad subjiciendum* shall be given to the Attorney General at least forty-eight hours before the making of the application and the Attorney General is entitled as of right to be heard either in person or by counsel upon the application. R.S.O. 1970, c. 197, s. 1 (2); 1972, c. 1, s. 9 (7).

Notice of application for writ of *habeas corpus*

2. The writ may be served either personally by actual delivery thereof to the person to whom it is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. R.S.O. 1970, c. 197, s. 2.

Service of writ

3. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto, he shall be deemed guilty of contempt of court, and the court or judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the court or judge to the end that he may be bound to Her Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. R.S.O. 1970, c. 197, s. 3.

Disobedience of writ

4. In case of neglect or refusal to become bound as aforesaid, the court or judge may commit such person to a correctional institution in the county wherein he resides or may be found, there to remain until he becomes bound as aforesaid

Committal

or is discharged by order of the court or a judge, and, if he becomes bound, the recognizance shall be returned and filed and continues in force until the matter of the contempt has been heard and determined, unless sooner ordered by the court or judge to be discharged. R.S.O. 1970, c. 197, s. 4.

Issue of writ of *certiorari*

5. Where a writ of *habeas corpus* is issued under the authority of this Act or otherwise, the court or judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the court or judge as by the writ may be provided, all the evidence, depositions, conviction and all proceedings had or taken, touching or concerning such confinement or restraint of liberty. R.S.O. 1970, c. 197, s. 5.

Procedure on return of writ

6. When upon a return to a writ of *habeas corpus* it is alleged that the person is detained by reason of a conviction or order other than a conviction or order of the Supreme Court or other court of record upon the return of the writ of *certiorari*, it is the duty of the court or judge to examine and consider the proceedings had and taken to ascertain if the proceedings show that the person restrained has been convicted of any offence against the law and that there is any evidence to sustain the conviction, or that upon the evidence the person accused is guilty of an offence against the law and that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence of which the person accused is guilty, and in such cases to remand the person detained to custody but otherwise to order his discharge. R.S.O. 1970, c. 197, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return

7. Although the return to a writ of *habeas corpus* is good and sufficient in law, the court or judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing or remanding the person. R.S.O. 1970, c. 197, s. 7.

Appeal from remand to custody

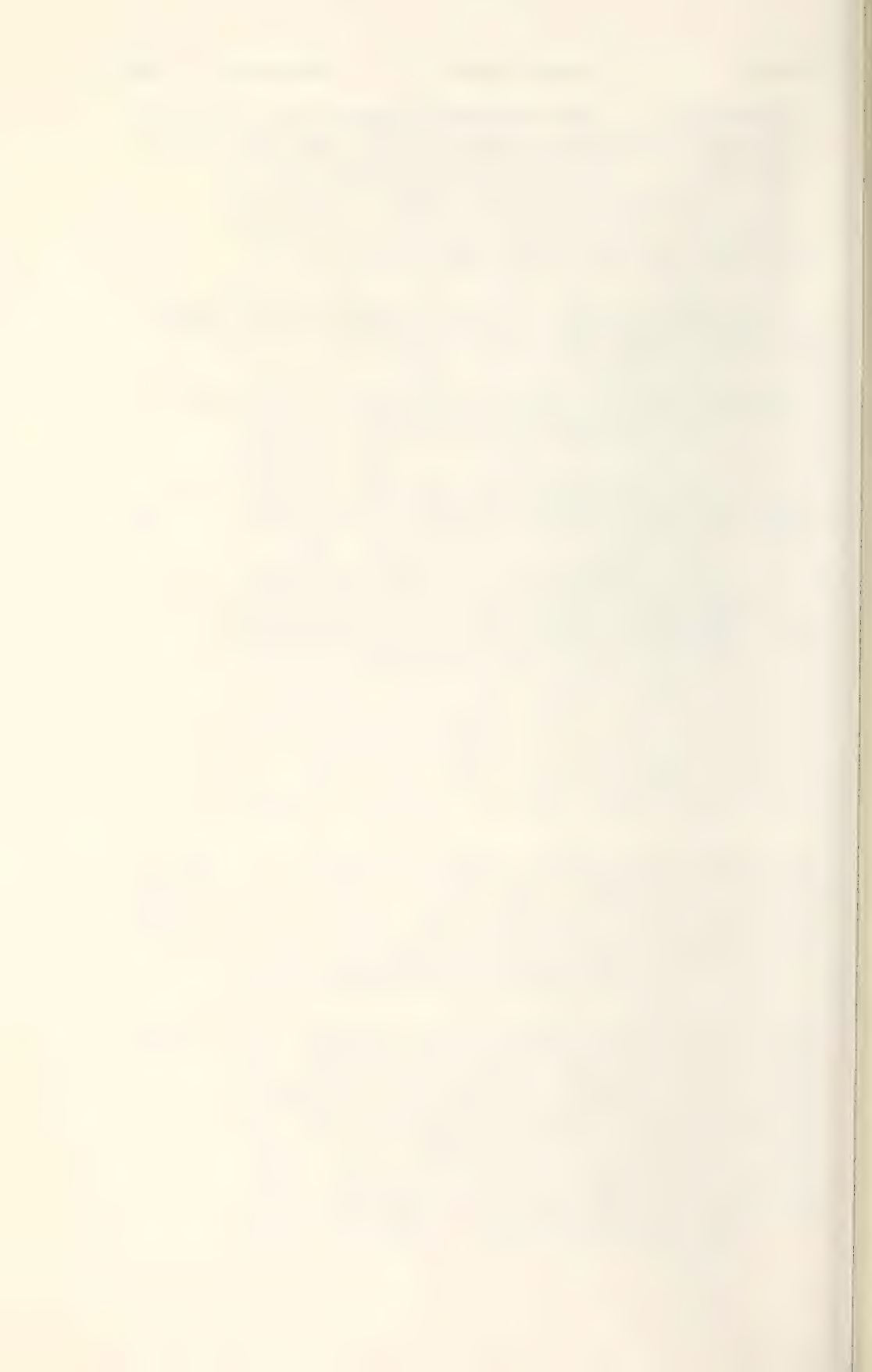
8.—(1) Where a person confined or restrained of his liberty is brought before a judge upon a writ of *habeas corpus* and is remanded into custody upon the original order or warrant of commitment or by virtue of any warrant, order or rule of such judge, such person may appeal from the decision or judgment of the judge to the Divisional Court, and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Divisional Court. R.S.O. 1970, c. 197, s. 8 (1); R.S.O. 1970, c. 197, s. 12 (2).

(2) The Divisional Court shall thereupon hear and determine the appeal without formal pleadings and, if the court determines that the confinement or restraint is illegal, shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. R.S.O. 1970, c. 197, s. 8 (2); R.S.O. 1970, c. 197, s. 12 (3). <sup>Court may order discharge</sup>

9. An appellant under section 8 may appeal from the decision of the Divisional Court to the Court of Appeal. <sup>Appeal to Court of Appeal</sup>  
R.S.O. 1970, c. 197, s. 9 (1).

10. This Act extends to all writs of *habeas corpus* awarded in pursuance of the Act passed in England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been specially named and provided for in this Act. R.S.O. 1970, c. 197, s. 10. <sup>Application of Act</sup>

11. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as seem necessary or expedient. R.S.O. 1970, c. 197, s. 11. <sup>Power to make rules</sup>



## CHAPTER 194

## Haliburton Act

1. Except where otherwise provided in this Act, the Provisional County of Haliburton and the corporation and council thereof have and possess respectively all the rights, powers, liabilities and incidents of a county, county corporation and county council, and, except where inconsistent with this Act, the law and the statutes applicable to counties, county corporations and county councils, and the members of such councils, apply. R.S.O. 1970, c. 198, s. 1.

Rights, liabilities and powers of the Provisional County corporation and council

2. No by-law for granting aid to a railway company is valid unless within three months from its passing it is approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 198, s. 2.

By-laws in aid of railways

3. The meetings of the council shall be held at the place in the county where the registry office is kept. R.S.O. 1970, c. 198, s. 3.

Meetings of council

4. For judicial purposes, including the holding of courts, the officers of such courts, judicial process and proceedings, and the selection of jurors, the Provisional County is united to and forms part of the County of Victoria. R.S.O. 1970, c. 198, s. 4.

County to form part of Victoria for judicial purposes

5. The justices of the peace appointed for the Provisional County are entitled to sit in the general sessions held for the County of Victoria. R.S.O. 1970, c. 198, s. 5.

Justices of the peace

6. Where an appeal lies from the decision of a justice or justices of the peace to the general sessions of the peace, the appeal in a case arising in the Provisional County lies to and may be heard and determined by the Court of General Sessions of the Peace for the County of Victoria. R.S.O. 1970, c. 198, s. 6.

Appeal from decisions of justices of the peace

7. All returns of convictions required by law to be made by a justice of the peace for the Provisional County shall be made to the clerk of the peace for the County of Victoria. R.S.O. 1970, c. 198, s. 7.

Returns of convictions

8. The Lieutenant Governor in Council may from time to time direct that one or more suitable jails or lock-ups shall be provided by the Minister of Government Services in the

Erection of jails

Provisional County out of money appropriated for that purpose. R.S.O. 1970, c. 198, s. 8; 1973, c. 2, s. 2.

Jails in  
Haliburton  
to be  
common  
jails of  
Haliburton  
and Victoria

**9.** Every jail and lock-up erected under the authority of the Lieutenant Governor in Council is a common jail of the Provisional County and of the County of Victoria for the safe custody of persons charged with the commission, within the Provisional County, of crimes, or with the commission therein of offences against any statute of Ontario or against any municipal by-law, who may not have been finally committed for trial, and for the safe custody of such persons when finally committed for trial until removed to the common jail at Lindsay, and for the confinement of persons sentenced within the Provisional County for such crimes or offences for periods not exceeding one month, and for the confinement of persons so sentenced for periods exceeding one month until such persons can be conveniently removed to the common jail at Lindsay, or other lawful prison to which they are sentenced. R.S.O. 1970, c. 198, s. 9.

Power to  
commit to  
the jail at  
Lindsay

**10.** Nothing in section 9 prevents any court or justice of the peace from directing the committal to the common jail at Lindsay, either for safe custody or for punishment, of any person whom it is considered expedient to commit thereto. R.S.O. 1970, c. 198, s. 10.

Appoint-  
ment and  
salary of  
jailer

**11.** The Lieutenant Governor in Council may appoint the jailer, jail surgeon and other jail employees for the Provisional County, and fix their salaries which shall be paid by the Provisional County. R.S.O. 1970, c. 198, s. 11.

To whom  
appeal lies

**12.**—(1) An appeal lies from the decision of the Assessment Review Court in respect of any municipality in the Provisional County to the judge of the county court of the County of Victoria.

Application  
R.S.O. 1980,  
c. 31

(2) The provisions of the *Assessment Act* with respect to appeals from the judge of the county court to the Ontario Municipal Board apply to the Provisional County. R.S.O. 1970, c. 198, s. 12, *revised*.

Land  
registry  
office

**13.** The land registrar shall keep his office in a place to be named for that purpose in his commission, or at such other place as is appointed by the Lieutenant Governor in Council. R.S.O. 1970, c. 198, s. 13.

Aid to grist  
mills by  
taking stock  
or lending  
money  
R.S.O. 1980,  
c. 302

**14.**—(1) In addition to the powers conferred by the *Municipal Act*, the council of a township or village in the Provisional County may pass by-laws for,

- (a) granting aid to or for promoting the establishment of a grist mill in the township or village;

(b) taking stock in any company incorporated for establishing a grist mill in the township or village; or

(c) lending money to any such company.

(2) The aid to be granted, the stock to be taken and the money to be lent under subsection (1) shall not in all exceed one-half of the actual cost of such grist mill or in any case the sum of \$3,000. Limit of aid

(3) Notwithstanding the *Municipal Act*, the vote in the affirmative of two-thirds of the electors actually voting upon any such by-law is necessary and sufficient to the carrying of the by-law. R.S.O. 1970, c. 198, s. 14 (1-3). Assent of two-thirds of rate-payers voting

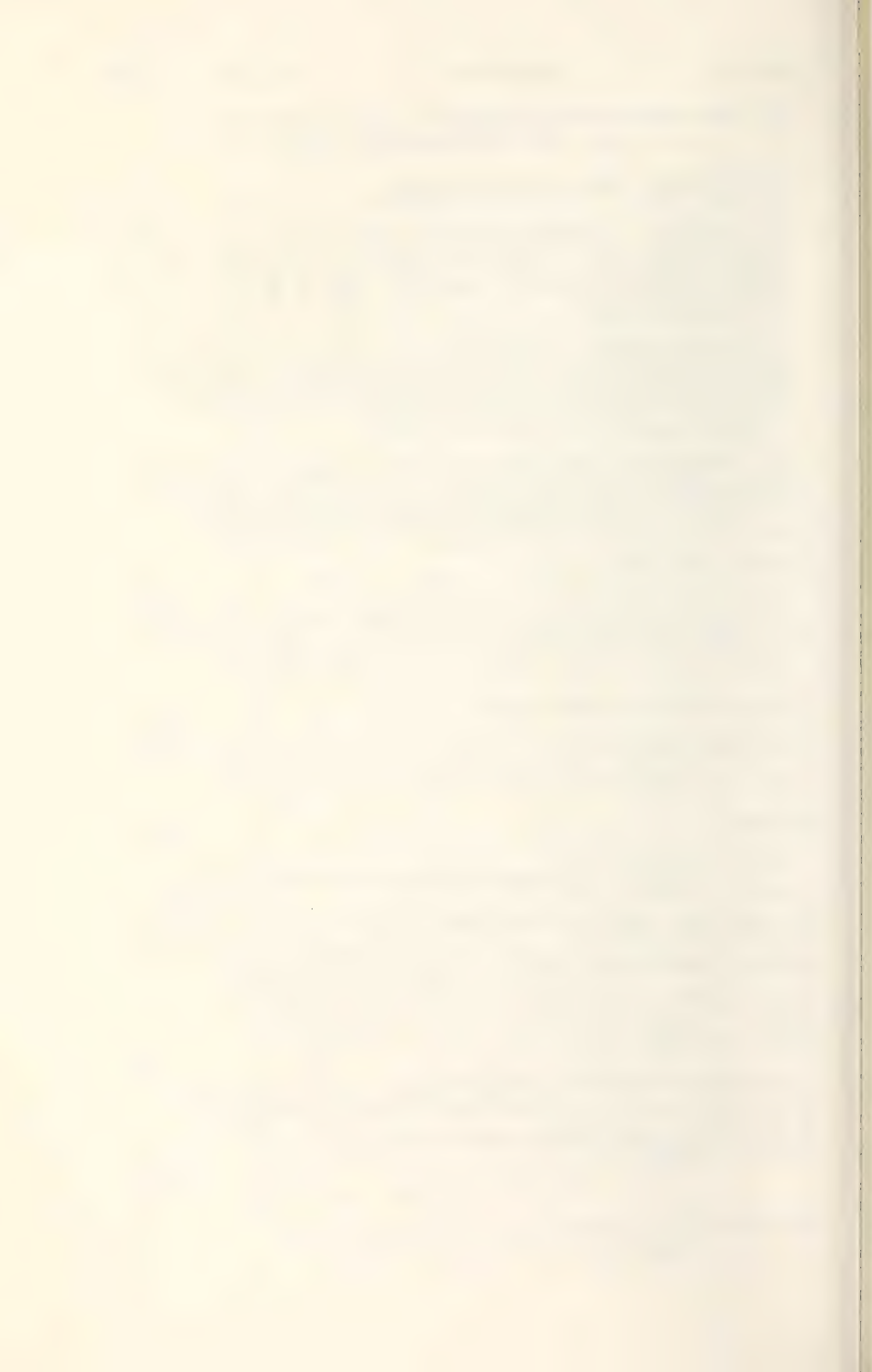
(4) No such by-law shall be passed for or in respect of the establishment of a grist mill in a location less than twenty-five kilometres from a grist mill established in the Provisional County and in operation on the 13th day of April, 1897. R.S.O. 1970, c. 198, s. 14 (4); 1978, c. 87, s. 37. Restriction upon power to grant bonus

(5) In case of a dispute as to the result of the vote on any by-law, the judge of the county court of the County of Victoria has the powers conferred by the *Municipal Act* upon the judge of a county court with respect to a scrutiny of the votes of electors upon a by-law. Deciding disputes as to result of vote

(6) The petition to the judge may be by an elector or by the council, and the proceedings for obtaining the judge's decision shall be the same as nearly as may be as in the case of a scrutiny. Proceedings

(7) The council of a municipality taking stock in a company under the authority of this section shall annually, at its first meeting for the year, elect from among its members a representative of such council to the board of directors of the company, and such representative is entitled to sit and vote at all meetings of the board and to vote at all meetings of shareholders in respect of the stock held by the municipality that he represents. Representation of council on board of directors

(8) Except as otherwise provided in this Act, the provisions of the *Municipal Act* as to money by-laws and the obtaining of the assent of the electors thereto apply. R.S.O. 1970, c. 198, s. 14 (5-8). Application of R.S.O. 1980, c. 302



## CHAPTER 195

## Healing Arts Radiation Protection Act

1.—(1) In this Act,

Interpre-  
tation

(a) “Appeal Board” means, the Health Facilities Appeal Board under the *Ambulance Act*;

R.S.O. 1980,  
c. 20

(b) “Commission” means the Healing Arts Radiation Protection Commission established under section 15;

(c) “Director” means the Director of X-ray Safety appointed under section 19;

(d) “inspector” means an inspector appointed under section 20;

(e) “owner”, when used with reference to an x-ray machine, means the owner or other person who has the management and control of the x-ray machine;

(f) “Minister” means the Minister of Health;

(g) “regulations” means the regulations made under this Act;

(h) “x-ray equipment” includes x-ray imaging systems, processing equipment and equipment directly related to the production of images for diagnosis or directly related to irradiation with x-rays for therapy;

(i) “x-ray machine” means an electrically powered device the purpose and function of which is the production of x-rays for the irradiation of a human being for a therapeutic or diagnostic purpose;

(j) “x-rays” means artificially produced electromagnetic radiation with peak energy greater than five kilovolts.

(2) In this Act, a reference to the installation of an x-ray machine includes a reference to the shielding of the area in which the x-ray machine is installed. 1980, c. 67, s. 1.

Administration  
of Act

**2.** The Minister is responsible for the administration of this Act. 1980, c. 67, s. 2.

Approval of  
installation

**3.**—(1) No person shall install an x-ray machine unless the Director has issued written approval for the installation.

Issuance of  
approval

(2) Subject to subsection (3), any person who applies in accordance with this Act and the regulations for written approval for the installation of an x-ray machine and,

(a) submits to the Director the plans, specifications and information prescribed by the regulations;

(b) who meets the requirements of this Act and the regulations; and

(c) pays the prescribed fee,

is entitled to be issued the written approval.

Criteria

(3) The Director may refuse to approve a proposed installation of an x-ray machine where,

(a) the proposed installation will not comply with this Act or the regulations;

(b) the application therefor is incomplete;

(c) the plans, specifications and information required by this Act and the regulations in respect of the installation of the x-ray machine have not been submitted to the Director or are incomplete; or

(d) any fees due are unpaid.

Installation

(4) Where the Director has issued written approval for the installation of an x-ray machine, no person shall install the x-ray machine other than in accordance with the plans, specifications and information on the basis of which the Director issued the written approval.

Revocation  
of approval

(5) Subject to section 10, the Director may revoke an approval where it was issued on mistaken or false information.

Approval  
of change

(6) Where the Director has given written approval for the installation of an x-ray machine and the x-ray machine has been installed in accordance with the plans, specifications and other information on the basis of which the Director issued the approval, no person shall change the installation without the written approval of the Director for the change.

(7) Subsections (1) to (5) apply with necessary modifications in respect of a change in an installation of an x-ray machine and, for the purpose, changing an installation of an x-ray machine shall be deemed to be installing an x-ray machine. 1980, c. 67, s. 3.

Application  
of subss. (1-5)

4.—(1) The owner of an x-ray machine shall not operate the x-ray machine or cause or permit the x-ray machine to be operated for the irradiation of a human being unless the x-ray machine, the location of the x-ray machine and the name and business address of the owner of the x-ray machine are registered with the Director.

Registration

(2) Upon the application of the owner of an x-ray machine and upon payment of the fee prescribed by the regulations, the Director shall register the x-ray machine, its location and the name and business address of the owner thereof.

Application

(3) An owner of an x-ray machine registered with the Director who changes his business address shall give written notice of the change to the Director within fifteen days of the occurrence of the change.

Notice of  
change

(4) An owner of an x-ray machine who is registered with the Ministry immediately before the coming into force of this Act shall be deemed to have registered with the Director under subsection (1).

Transitional

(5) The Director may require a person mentioned in subsection (4) to file with the Director plans, specifications and information in respect of the x-ray machine and its installation and every such person shall file the plans, specifications and information when so required. 1980, c. 67, s. 4.

Filing of  
material

5.—(1) No person shall operate an x-ray machine for the irradiation of a human being unless the person meets the qualifications and requirements prescribed by the regulations.

Use of  
x-ray  
machine

(2) The following persons shall be deemed to meet the qualifications prescribed by the regulations:

Persons  
deemed to  
be qualified

1. A legally qualified medical practitioner.
2. A member of the Royal College of Dental Surgeons of Ontario.
3. A person registered as a chiropodist under the *Chiropody Act* on the 1st day of November, 1980.
4. A person registered as a chiropodist under the *Chiropody Act* after the 1st day of November, 1980, who is a graduate of a four-year course of instruction in

R.S.O. 1980,  
c. 72

chiropody accredited by the Council on Education of The Canadian Association of Chiropodists.

R.S.O. 1980,  
c. 127

5. A person registered as a chiropractor under the *Drugless Practitioners Act*.

6. A person registered as an osteopath under the *Drugless Practitioners Act*.

R.S.O. 1980,  
c. 430

7. A radiological technician registered under the *Radiological Technicians Act*.

8. A person registered as a dental hygienist by the Council of the Royal College of Dental Surgeons of Ontario.

Transitional

(3) Subsection (1) does not apply before the 1st day of January, 1984, or such later date as may be named by proclamation of the Lieutenant Governor in respect of a person who, prior to the coming into force of this section, was operating an x-ray machine for the irradiation of human beings. 1980, c. 67, s. 5.

Instructions  
required

6. No person shall operate an x-ray machine for the irradiation of a human being unless the irradiation has been prescribed by,

(a) a legally qualified medical practitioner;

(b) a member of the Royal College of Dental Surgeons of Ontario;

R.S.O. 1980,  
c. 72

(c) a person registered as a chiropodist under the *Chiropody Act* on the 1st day of November, 1980;

(d) a person registered as a chiropodist under the *Chiropody Act* after the 1st day of November, 1980, who is a graduate of a four-year course of instruction in chiropody accredited by the Council on Education of The Canadian Association of Chiropodists;

(e) a person registered as a chiropractor under the *Drugless Practitioners Act*; or

(f) a person registered as an osteopath under the *Drugless Practitioners Act*. 1980, c. 67, s. 6.

Causing or  
permitting  
use of  
x-ray  
machine

7. On and after the 1st day of January, 1984, or such later date as may be named by proclamation of the Lieutenant Governor, no person shall cause or permit any other person to operate an x-ray machine for the irradiation of a human being unless the other person meets the qualifications and requirements prescribed by the regulations. 1980, c. 67, s. 7.

8. No person shall operate an x-ray machine for the irradiation of a human being, unless the x-ray machine meets the standards prescribed by the regulations. 1980, c. 67, s. 8.

X-ray  
machine  
standards

9.—(1) The owner of an x-ray machine that is installed for the purpose of the irradiation of human beings shall designate a person who meets the qualifications prescribed by the regulations and who is,

Radiation  
protection  
officer

(a) a legally qualified medical practitioner;

(b) a member of the Royal College of Dental Surgeons of Ontario;

(c) a person registered as a chiropodist under the *Chiropody Act* on the 1st day of November, 1980;

R.S.O. 1980,  
c. 72

(d) a person registered under the *Chiropody Act* after the 1st day of November, 1980 who is a graduate of a four-year course of instruction in chiropody accredited by the Council of Education of The Canadian Association of Chiropodists;

(e) a person registered as a chiropractor under the *Drugless Practitioners Act*; or

R.S.O. 1980,  
c. 127

(f) a person registered as an osteopath under the *Drugless Practitioners Act*,

as the radiation protection officer for the facility in which the x-ray machine is installed.

(2) The owner of a portable x-ray machine shall designate a person who meets the qualifications prescribed by the regulations and who is described in clause (1) (a), (b), (c), (d), (e) or (f) as the radiation protection officer for the portable x-ray machine.

Idem,  
portable  
x-ray  
machine

(3) Subsection (2) does not apply in respect of a portable x-ray machine that is operated only in a facility for which a radiation protection officer has been appointed under subsection (1), but the radiation officer is responsible in respect of the portable x-ray machine in accordance with subsection (4).

Exception

(4) A radiation protection officer for a facility is responsible,

Responsi-  
bilities

(a) for ensuring that every x-ray machine operated in the facility is maintained in safe operating condition; and

- (b) for such other matters related to the safe operation of each x-ray machine in the facility as are prescribed by the regulations. 1980, c. 67, s. 9.

Proposal  
to refuse  
to issue  
or to revoke  
an approval

**10.**—(1) Where the Director proposes to refuse to issue or to revoke an approval under section 3 for the installation or for a change in the installation of an x-ray machine, the Director shall serve notice of his proposal, together with written reasons therefor, on the applicant or the person to whom the approval was issued, as the case may be.

Notice

(2) A notice under subsection (1) shall inform the applicant or person to whom the approval was issued that he is entitled to a hearing by the Appeal Board if, within fifteen days after the notice under subsection (1) is served on him, he gives written notice to the Director and the Appeal Board requiring a hearing by the Appeal Board and he may so require such a hearing.

Powers of  
Appeal  
Board

(3) Where a hearing is required under subsection (2), the Appeal Board shall appoint a time for and hold the hearing and may direct the Director to carry out his proposal or refrain from carrying out his proposal and to take such action as the Appeal Board considers the Director ought to take in accordance with this Act and the regulations and, for such purposes, the Appeal Board may substitute its opinion for that of the Director. 1980, c. 67, s. 10.

Parties

**11.**—(1) The Director, the applicant or other person who has required the hearing and such other persons as the Appeal Board may specify are parties to proceedings before the Appeal Board under this Act.

Notice of  
hearing

(2) Notice of a hearing shall afford the applicant or other person who has required the hearing a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue of the approval of the Director.

Examination  
of docu-  
mentary  
evidence

(3) Any party to proceedings under section 10 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have  
taken part  
in investiga-  
tion, etc.

(4) Members of the Appeal Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Appeal Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Appeal Board at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Recording of evidence

(6) The findings of fact of the Appeal Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of fact

R.S.O. 1980, c. 484

(7) No member of the Appeal Board shall participate in a decision of the Appeal Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Appeal Board shall be given unless all members so present participate in the decision.

Only members at hearing to participate in decision

(8) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Appeal Board within a reasonable time after the matter in issue has been finally determined. 1980, c. 67, s. 11.

Release of documentary evidence

**12.**—(1) Any party to the proceedings before the Appeal Board under this Act may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Appeal to court

(2) Where any party appeals from a decision or order of the Appeal Board, the Appeal Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Appeal Board's record, shall constitute the record in the appeal.

Record to be filed in court

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Minister entitled to be heard

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm, alter or rescind the decision of the Appeal Board and may exercise all powers of the Appeal Board to direct the Director to take any action which the Appeal Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Director or of the Appeal Board, or the court may refer the matter back to the Appeal Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1980, c. 67, s. 12.

Powers of court on appeal

**13.**—(1) The Director or an inspector may make a written order directed to any one or more of,

Order by Director or inspector

- (a) the owner of an x-ray machine;
- (b) any person who operates the x-ray machine; or
- (c) the radiation protection officer for the facility in which the machine is installed or, in the case of a portable x-ray machine, the radiation protection officer for the portable x-ray machine,

requiring the taking of such action as, in the opinion of the Director or inspector, upon reasonable and probable grounds, is necessary in order to achieve compliance with this Act or the regulations, or both, or is necessary or advisable to protect the health or safety of any patient or member of the public in or near the premises where the x-ray machine is operated.

Notice of  
proposal to  
make order

(2) The Director or the inspector who proposes to make an order under subsection (1) shall serve notice of the proposal, together with written reasons therefor, on the person to whom he proposes to direct the order.

Notice  
requiring  
hearing

(3) A notice under subsection (2) shall inform the person that he is entitled to a hearing by the Appeal Board if he gives notice in writing to the Director and the Appeal Board, within fifteen days after the notice under subsection (2) is served on him, requiring a hearing and he may so require such a hearing.

Power of  
Director or  
inspector  
where no  
hearing

(4) Where a person served with notice under subsection (2) does not require a hearing in accordance with subsection (3), the Director or inspector may carry out the proposal stated in his notice.

Powers of  
Appeal  
Board  
where  
hearing

(5) Where a hearing is required under subsection (3), the Appeal Board shall appoint a time for and hold the hearing and by order may direct the Director or the inspector to carry out his proposal or refrain from carrying out his proposal and to take such action as the Appeal Board considers the Director or the inspector ought to take in accordance with this Act and the regulations and, for such purposes, the Appeal Board may substitute its opinion for that of the Director or the inspector.

Application  
of  
ss. 11, 12

(6) Sections 11 and 12 apply with necessary modifications to proceedings under this section. 1980, c. 67, s. 13.

Emergency  
order

**14.**—(1) Where the Director or an inspector is of the opinion, upon reasonable and probable grounds, that an emergency exists by reason of danger to the health or safety of any patient or member of the public in respect of an x-ray machine or the installation, operation or maintenance of an x-ray machine, the

Director or inspector may make an oral or written order directed to any one or more of,

- (a) the owner of the x-ray machine;
- (b) any person who operates the x-ray machine;
- (c) the radiation protection officer for the facility in which the x-ray machine is installed or, in the case of a portable x-ray machine, the radiation protection officer for the portable x-ray machine.

(2) An order under subsection (1) may require the person to whom it is directed to stop operating or stop the operation of the x-ray machine either permanently or for a specific period of time. Contents of order

(3) A person affected by an order under subsection (1) may appeal therefrom in person or by an agent and by telephone or otherwise to the Director, and the Director, after receiving the submissions of the person and of the inspector, shall vary, rescind or confirm the order. Immediate appeal

(4) Where the Director makes an order under subsection (1) or varies or confirms an order under subsection (3), the Director shall forthwith thereafter serve a written copy of the order or the order as varied or confirmed, together with written reasons therefor, upon the person to whom the order is directed. Written reasons for order

(5) An order under subsection (1) or an order as varied or confirmed under subsection (3) shall inform the person to whom it is directed that he is entitled to a hearing by the Appeal Board if he gives to the Director and the Appeal Board, within fifteen days after a copy of the order or the order as varied or confirmed is served on him, notice in writing requiring a hearing and he may so require such a hearing. Notice

(6) Notwithstanding that an appeal is taken against an order under subsection (1) or an order as varied or confirmed under subsection (3), the order is effective at and from the time it is communicated to the person to whom it is directed until it is confirmed, varied or rescinded on appeal and the person shall comply with the order immediately. Effect of order

(7) Where a hearing is required under subsection (5), the Appeal Board shall appoint a time for and hold the hearing and the Appeal Board by order may confirm, alter or rescind the order of the Director and for such purposes the Appeal Board may substitute its opinion for that of the Director. Powers of Appeal Board

(8) Sections 11 and 12 apply with necessary modifications to proceedings under this section. Application of ss. 11, 12

Where order  
rescinded  
by Director

(9) The Director by an order may rescind an order made under subsection (1) or an order as varied or confirmed and in such case shall serve a copy of the order upon the person to whom the order or the order as varied or confirmed was directed. 1980, c. 67, s. 14.

Commission  
established

**15.**—(1) There is hereby established a commission to be known as the Healing Arts Radiation Protection Commission.

Composition

(2) The Commission shall be composed of five persons.

Disquali-  
fication

(3) No person who is or has been a member of the governing body of, or who is or has been registered under any Act governing a health discipline or a health practice, shall be a member of the Commission.

Chairman  
and vice-  
chairman

(4) The Lieutenant Governor in Council shall appoint the members of the Commission and shall designate a chairman and a vice-chairman from among the members of the Commission.

Terms of  
office

(5) The members of the Commission may be appointed for a term of one, two or three years and members may be reappointed, but in no case shall a member serve for more than six consecutive years.

Vacancy

(6) Every vacancy on the Commission caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of the member.

Remuneration

(7) The members of the Commission shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Staff

R.S.O. 1980,  
c. 418

(8) Such employees as are necessary to carry out the duties of the Commission shall be employed under the *Public Service Act*. 1980, c. 67, s. 15.

Duties  
of  
Commission

**16.**—(1) The Commission,

- (a) shall advise the Minister on matters relating to the health and safety of persons in respect of irradiation by x-rays;
- (b) is responsible for the continuing development of an X-ray Safety Code;
- (c) shall review the contents of courses in the operation of x-ray machines and x-ray equipment and approve the courses it considers satisfactory;

(d) shall examine, study and report to the Minister on such matters, including health screening programs involving the use of x-rays, as the Minister may refer to the Commission for the purpose; and

(e) shall perform such other duties as are assigned to it by or under this or any other Act.

(2) The Commission shall submit an annual report on its activities to the Minister which shall include such additional information as the Minister may require. 1980, c. 67, s. 16.

**17.**—(1) The Commission shall establish advisory committees to assist it in the continuing development of an X-ray Safety Code and to assist it in respect of safety in relation to irradiation from x-rays in each of the following disciplines:

1. Chiropody.
2. Chiropractic.
3. Dentistry.
4. Medical radiology.
5. Radiological technology.

(2) Subject to the approval of the Minister, the Commission may establish additional advisory committees to assist it in respect of safety in relation to irradiation from x-rays.

(3) Subject to the approval of the Minister, the Commission shall fix the total number of members of each advisory committee established under subsection (1) or (2).

(4) The members of an advisory committee appointed under subsection (1) or (2) may be paid such remuneration on a daily or other basis, and such necessary expenses, as may be fixed or approved by the Minister. 1980, c. 67, s. 17.

**18.** Subject to the approval of the Minister, the Commission may engage scientific, technical and professional consultants in matters relating to protection from irradiation by x-rays. 1980, c. 67, s. 18.

**19.** The Minister shall appoint an employee of the Ministry of Health as Director of X-ray Safety for the purposes of this Act and the regulations. 1980, c. 67, s. 19.

Inspectors

**20.**—(1) The Minister may appoint in writing one or more employees of the Ministry of Health or other persons as inspectors for the purposes of this Act and the regulations and in an appointment may limit the authority of an inspector in such manner as the Minister considers necessary or advisable.

Certificate  
of  
appointment

(2) The Minister shall issue to every inspector appointed under subsection (1) a certificate of his appointment.

Production  
of  
certificate

(3) Every inspector, in the execution of his duties under this Act and the regulations, shall produce his certificate of appointment upon request.

Inspection

(4) An inspector at all reasonable times may enter and inspect the premises and may inspect the operations and all records and radiographs where an x-ray machine is installed or operated and may require the production of proof that any person who operates an x-ray machine meets the qualifications and requirements prescribed by the regulations to ensure that the provisions of this Act and the regulations are complied with.

Powers  
of  
inspector

(5) Upon an inspection under this section, an inspector is entitled to make tests and examinations to determine whether or not x-ray machines are installed and used in compliance with this Act and the regulations.

Copies

(6) Upon an inspection under this Act, an inspector, upon giving a receipt therefor, may remove any material that relates to the purpose of the inspection in order to make a copy thereof, but the copying shall be carried out with reasonable dispatch and the material in question shall be promptly thereafter returned to the person being inspected.

Admissibility  
of  
copies

(7) Any copy made as provided in subsection (6) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original.

Obstruction

(8) No person shall obstruct an inspector or withhold or destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of an inspection. 1980, c. 67, s. 20.

Information  
confidential

**21.**—(1) Each member of the Commission, each employee of the Commission, each consultant engaged by the Commission, the Director, each inspector appointed under this Act and each person engaged in the administration of this Act and the regulations shall preserve secrecy with respect to all matters that come to his

knowledge in the course of his employment or duties pertaining to the health of any person and shall not communicate any such matter to any other person except as provided in this Act.

(2) A person referred to in subsection (1) may furnish information Exceptions pertaining to the health of a person,

- (a) in connection with the administration of this Act or any Act of Ontario or of Canada related to the delivery of health services or to safety in relation to irradiation from x-rays or regulations made thereunder;
- (b) in proceedings under this Act or the regulations;
- (c) to the person who provided a service to which the information is related, his solicitor or personal representative, the executor, administrator or committee of his estate, his trustee in bankruptcy or other legal representative; or
- (d) to the person who received the service to which the information is related, his solicitor, personal representative, another person who has lawful custody of or is guardian for the person or other legal representative of the person.

(3) The Director may communicate information of the kind referred to in subsection (2) and any other information related thereto to the statutory body governing the profession or to a professional association of which a person who provides a service referred to in subsection (2) is a member or governing the health practice practised by the person. Exception for professional discipline 1980, c. 67, s. 21.

**22.** The Lieutenant Governor in Council may make regula- Regulations tions,

- (a) prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations;
- (b) prescribing classes of or in respect of any matter that is or may be prescribed under the regulations;
- (c) limiting the application of any regulation to any one or more of the classes prescribed under clause (b);
- (d) exempting any class of persons, x-ray machines or facilities from any provision of this Act or the regulations and attaching conditions to any such exemption;

(e) governing or limiting, or both, the purposes for which any class of persons may operate x-ray machines or any class of x-ray machines;

(f) prescribing an X-ray Safety Code including,

- (i) prescribing standards for the installation of x-ray machines,
- (ii) prescribing standards for darkrooms and dark-room procedures associated with the operation of x-ray machines or any class of x-ray machines,
- (iii) prescribing standards and procedures for the operation of x-ray machines and x-ray equipment or any class of x-ray machines or x-ray equipment,
- (iv) prescribing physical standards for persons who operate x-ray machines or x-ray equipment,
- (v) prescribing standards and procedures for the purpose of minimizing exposure to x-rays of patients and members of the public,
- (vi) governing the testing of x-ray machines and x-ray equipment including, but not limited to, prescribing tests in respect of x-ray machines and x-ray equipment and requiring persons operating x-ray machines and x-ray equipment and radiation protection officers to perform the tests,
- (vii) prescribing programs for evaluation of performance of procedures and observance of standards,
- (viii) prescribing additional duties of radiation protection officers and persons who own or operate x-ray machines,
- (ix) prescribing standards of design, construction, operation and performance for x-ray machines and x-ray equipment operated in Ontario,
- (x) requiring compliance with any matter prescribed or governed under subclauses (i) to (ix);

(g) governing the keeping of records by persons who own or operate x-ray machines and by radiation protection

officers and requiring and governing returns by them to the Director;

- (h) prescribing classes of radiation protection officers and restricting or limiting the types of facilities or x-ray machines or both for which any such class may be designated as radiation protection officers;
- (i) prescribing subject-matters for courses of study in the operation of x-ray machines and x-ray equipment and prohibiting approval by the Commission of any course of study that does not include a subject-matter so prescribed for the course of study;
- (j) prescribing additional duties and powers of the Commission, the Director and inspectors;
- (k) prescribing forms and providing for their use;
- (l) adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
- (m) prescribing fees for registrations and approvals.  
1980, c. 67, s. 22.

**23.—(1)** Every person who,

Offences

- (a) knowingly furnishes false information in an application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. 1980, c. 67, s. 23.

Corporations

**24.** Where any provision of this Act or the regulations or any order issued under this Act by the Director is contravened, not-

Proceedings  
to prohibit  
continuation  
or  
repetition  
of  
contravention

withstanding any other remedy or any penalty imposed, the Director may apply to the Supreme Court by originating motion for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will or is likely to result in the continuation or repetition of the contravention by the person committing the contravention, and the court may make the order and it may be enforced in the same manner as any other judgment of the Supreme Court. 1980, c. 67, s. 24.

Protection  
from  
personal  
liability

**25.**—(1) No action or other proceeding for damages shall be instituted against the Director or an inspector for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Crown not  
relieved of  
liability  
R.S.O. 1980,  
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1980, c. 67, s. 25.

Service

**26.**—(1) Any notice, order, decision or other document required to be given, served or delivered under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by registered mail addressed to the person to whom it is required to be given, served or delivered at the latest address for service appearing on the records of the Ministry or, where there is no address for service so appearing, at the address, if any, last known to the Director.

When service  
deemed made

(2) Where service is made by registered mail in accordance with subsection (1), the service shall be deemed to be made on the seventh day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice, order, decision or other document until a later date. 1980, c. 67, s. 26.

Commence-  
ment

**27.** This Act does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1980, c. 67, s. 27.

## CHAPTER 196

### Health Disciplines Act

#### PART I

##### GENERAL

1.—(1) In this Act,

Interpre-  
tation

- (a) “Board” means the Health Disciplines Board under section 6;
- (b) “health discipline” means a health discipline to which a Part of this Act applies;
- (c) “Minister” means the Minister of Health;
- (d) “regulations” means the regulations made under this Act.

(2) In this Part,

Idem

- (a) “College” means the corporate body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (b) “complaints committee” means the complaints committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (c) “Council” means the governing body of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;
- (d) “discipline committee” means the discipline committee of a health discipline or group of health disciplines as established for that discipline or group in a Part of this Act;

(e) "registration" means,

- (i) a licence to practise a health discipline or group of health disciplines issued under a Part of this Act requiring a licence to practise, or
- (ii) a certificate respecting the practising of a health discipline or group of health disciplines issued under a Part of this Act,

the issuance of which is required to be entered on the register of the appropriate College, and "registered" has a corresponding meaning.

References  
to hearings  
R.S.O. 1980,  
c. 484

(3) Nothing in this Act shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1974, c. 47, s. 1.

Administra-  
tion of Act

2. The Minister is responsible for the administration of this Act. 1974, c. 47, s. 2.

Duties of  
Minister

3.—(1) It is the duty of the Minister to ensure that the activities of health disciplines are effectively regulated and co-ordinated in the public interest, to have appropriate standards of practice developed and ensure that these are maintained and to ensure that the rights of individuals to the services provided by health disciplines of their choice are maintained and to these ends to,

- (a) inquire into or direct the appropriate Council or Councils to inquire into the state of the practice of one or more health disciplines in any locality or institution;
- (b) require Councils to provide such reports and information as the Minister requires for his purposes including information from the registers of the Colleges;
- (c) review proposals by a Council for changes in legislation or regulations of concern to that Council;
- (d) consider the by-laws of Councils and provide advice and guidance to Councils with respect to the proposed implementation or revision of such by-laws;

(e) request a Council to make, amend or revoke regulations respecting any of the matters specified in its applicable Part; and

(f) review legislation respecting the provision of health services by health disciplines.

(2) Where the Minister requests in writing that a Council make, amend or revoke a regulation under clause (1) (e) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

Regulations  
by Lieutenant  
Governor in  
Council

(3) The Minister may appoint such advisory committees as he considers desirable and appropriate to assist him in carrying out his duties under this Act. 1974, c. 47, s. 3.

Appointment  
of advisory  
committees

4. Where the Minister or a Council proposes changes to be made in legislation or regulations respecting a health discipline, the Minister shall distribute the proposals to all health disciplines and all health disciplines are entitled to make submissions to the Minister with respect to such proposals. 1974, c. 47, s. 4.

Distribution  
of proposed  
changes in  
legislation  
or regulations

5. Where a College has incurred expenses in complying with the directions of the Minister under this Part, the Minister may, out of moneys appropriated therefor by the Legislature, make appropriate payments to reimburse the College in whole or in part for the expenses incurred. 1974, c. 47, s. 5.

Payments  
to Council

6.—(1) The Health Disciplines Board is continued.

Health  
Disciplines  
Board

(2) The Board shall be composed of not fewer than five and not more than seven members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister, and the Lieutenant Governor in Council shall designate one of the members of the Board to be chairman and one to be vice-chairman.

Composition

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been a member of a Council or who is or has been registered under this Act or any other Act governing a health practice shall be a member of the Board. 1974, c. 47, s. 6 (1-3).

Disqualifi-  
cation

(4) Appointments and reappointments of members of the Board shall be for terms of three years. 1974, c. 47, s. 6 (4), *revised*.

Term

## Vacancies

(5) Every vacancy on the Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

## Quorum

(6) A majority of the members of the Board constitutes a quorum.

## Remuneration

(7) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

## Seal

(8) The Board may prescribe and adopt a seal.

## Board employees

R.S.O. 1980,  
c. 418

(9) Such employees as are necessary to carry out the duties of the Board under this Act shall be employed under the *Public Service Act*. 1974, c. 47, s. 6 (5-9).

## Duties of Board

**7.—**(1) The Board shall,

- (a) conduct such hearings and perform such duties as are assigned to it by or under this or any other Act; and
- (b) submit an annual report on its activities to the Minister which shall include such additional information as the Minister may require and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

## Expert advice

(2) The Board may obtain expert or professional advice in connection with a hearing or complaint but the adviser shall be a person independent of,

- (a) the parties in the case of a hearing; or
- (b) the complainant and the member complained against in the case of a complaint,

and in the case of a hearing, the nature of the advice shall be made known to the parties in order that they may make submissions as to the advice. 1974, c. 47, s. 7.

## Complaints

**8.—**(1) Where a complaints committee has made a disposition of a complaint respecting a member of its College in accordance with the provisions of the applicable Part of this

Act governing that College, the Registrar of the College shall send to the member and to the complainant by prepaid first class mail, a copy of the written decision made by the complaints committee and reasons therefor, if any, together with notice advising the complainant of his right of review under subsection (2).

(2) A complainant or the member complained against who is not satisfied with the decision made by a complaints committee disposing of a complaint, except a decision to refer a matter to the discipline committee, may within twenty days of receipt of the written decision request the Board to review the decision and the Board shall require the Registrar of the College to transmit to the Board within fifteen days of the Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his complaint and the member an opportunity to state his answer thereto, either personally, by his agent or in writing. 1974, c. 47, s. 8. Review of complaints

9. Where a complaint respecting a member of a College has not been disposed of by the complaints committee of the College within sixty days after the complaint is made, the Board upon application therefor may require the complaints committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the committee within sixty days after the Board's request, the Board shall undertake such investigation and possesses all the powers of investigation that the complaints committee or the Registrar has in the applicable Part of this Act. 1974, c. 47, s. 9. Investigation of complaint by Board

10.—(1) The Board may after review or investigation of a complaint under section 8 or 9 refer the complaint to the complaints committee and the Board may, Powers of Board after review or investigation of complaint

- (a) confirm the decision, if any, made by the complaints committee;
- (b) make such recommendations to the complaints committee as the Board considers appropriate; or
- (c) require the complaints committee to take such action or proceedings as the committee is authorized to undertake under the applicable Part of this Act.

(2) Three members of the Board constitute a quorum for purposes of investigation or review of a complaint under section 8 or 9 or a hearing under section 11. Board quorum

(3) The Board shall give its decision and reasons therefor in writing to the complainant and the member complained against. 1974, c. 47, s. 10. Decision and reasons

Notice of  
proposal  
to refuse  
registration

**11.—(1)** Where a registration committee proposes to refuse to grant registration to an applicant, or proposes to attach terms, conditions or limitations to a registration, the Registrar on behalf of the committee shall serve notice of the proposal of the committee, together with written reasons therefor, on the applicant or registrant and a copy thereof to the Board.

Exemptions

(2) Subsection (1) does not apply to a refusal to grant registration to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of a discipline committee.

Notice  
requiring  
hearing or  
review

(3) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Board or to a review by the Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Board requiring a hearing or such review by the Board, as he specifies.

Powers of  
registration  
committee  
where  
hearing  
or review

(4) Where an applicant or registrant does not require a hearing or review by the Board in accordance with subsection (3), the Board shall so notify the registration committee making the proposal and the committee may carry out the proposal stated in its notice under subsection (1).

Findings  
of fact

(5) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484

Procedures on  
hearings

(6) The provisions of subsections 12 (2) to (5) and subsections 12 (7) and (8) apply with necessary modifications to proceedings before the Board under this section.

Powers of  
Board  
upon hearing  
or review

(7) The Board shall, after the hearing or review,

- (a) confirm the proposed decision of the registration committee; or
- (b) require the registration committee to permit the applicant to take qualifying examinations or additional training as a condition for registration, or both, as specified by the registration committee; or
- (c) require the registration committee to direct the Registrar to register the applicant on any appro-

priate register subject to such conditions as the Board considers appropriate in cases where the Board finds that the applicant meets the requirements for registration and that the committee has exercised its powers improperly; or

- (d) refer the matter back to the registration committee for further consideration and the Board may make such recommendations as it considers appropriate in the circumstances.

(8) The registration committee and the applicant or <sup>Parties</sup> registrant are parties to proceedings before the Board under this section.

(9) Any party to proceedings before the Board under this <sup>Appeals</sup> section may appeal from its decision or order to the Divisional Court in accordance with the rules of court and the provisions of section 13 apply with necessary modifications as if it were an appeal from a decision or order of a discipline committee. 1974, c. 47, s. 11.

**12.**—(1) In proceedings before the discipline committee <sup>Parties to discipline proceedings</sup> of a College, the College and the member of the College whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) A member whose conduct is being investigated in <sup>Examination of documentary evidence</sup> proceedings before a discipline committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(3) Members of a discipline committee holding a hearing <sup>Members holding hearing not to have taken part in investigation, etc.</sup> shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the discipline committee or at a previous hearing of the committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the discipline committee shall be held <sup>*In camera*</sup> *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where, <sup>R. S. O. 1980, c. 484</sup>

(a) matters involving public security may be disclosed;  
or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Recording of  
evidence

(5) The oral evidence taken before a discipline committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost.

Evidence  
R.S.O. 1980,  
c. 484

(6) Notwithstanding the *Statutory Powers Procedure Act*, nothing is admissible in evidence before a discipline committee that would be inadmissible in a court in a civil case and the findings of a discipline committee shall be based exclusively on evidence admitted before it.

Only members  
at hearing to  
participate  
in decision

(7) No member of a discipline committee shall participate in a decision of the committee pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of  
documentary  
evidence

(8) Documents and things put in evidence at a hearing of a discipline committee shall, upon the request of the person who produced them, be released to him by the committee within a reasonable time after the matter in issue has been finally determined. 1974, c. 47, s. 12.

Appeal to  
court

**13.**—(1) Any party to proceedings before a discipline committee may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Powers of  
court on  
appeal

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee or the College to take any action which the committee or the College may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee, or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1974, c. 47, s. 13.

Service of  
notice

**14.**—(1) Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence,

accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

(2) Every member of the Health Disciplines Board and of the discipline committee of a College has power to administer oaths and affirmations for the purposes of any of its proceedings. 1974, c. 47, s. 14.

Admin-  
istering  
oaths

**15.** Any statement containing information from the records required to be kept by a Registrar under any Part of this Act, purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. 1974, c. 47, s. 15.

Registrar's  
certificate  
as evidence

**16.** No action or other proceeding for damages shall be instituted against the Board, a College, a Council, a committee or any member of the Board, Council or committee, or any officers, servants, agents or appointees of the Board, or a College for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. 1974, c. 47, s. 16.

Immunity of  
Board,  
College,  
Councils and  
committees

**17.** No duly registered member of a College is liable to any action arising out of negligence or malpractice in respect of professional services requested or rendered unless such action is commenced within one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which he alleges negligence or malpractice. 1974, c. 47, s. 17.

Limitation  
for  
malpractice  
actions

**18.—(1)** Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false certificate or document with respect to registration is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Falsification  
of certificates

(2) Any person who wilfully procures or attempts to procure himself to be registered under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1974, c. 47, s. 18.

Offences for  
false repre-  
sentation

Onus of  
proof  
respecting  
registration

**19.** Where registration under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so registered under this Act rests upon the accused. 1974, c. 47, s. 19.

## PART II

### DENTISTRY

Interpre-  
tation

**20.—(1)** In this Part,

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the Royal College of Dental Surgeons of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of dentistry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of dentistry” means any professional service usually performed by a dentist or a dental surgeon, and includes,
  - (i) the diagnosis or treatment of, and the prescribing, treating or operating for the prevention, alleviation or correction of any disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, in or from any human tooth, jaw or adjacent structure or tissue or any injury thereto,
  - (ii) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing or prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes indicated in subclause (i), to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue or in the treatment of any condition thereof, or replacing, improving or supplementing any human tooth, associated structure or tissue, and
  - (iii) the taking or making, or the giving of advice or assistance or the providing of facilities for

the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge, appliance or thing;

(g) "Registrar" means the Registrar of the College;

(h) "regulations" means the regulations made under this Part.

(2) The practice of dentistry is a health discipline to which this Part applies. 1974, c. 47, s. 20.

**21.**—(1) The Royal College of Dental Surgeons of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

(2) The objects of the College are,

Objects

- (a) to regulate the practice of dentistry and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of dentistry;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected. 1974, c. 47, s. 21.

**22.**—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled, subject to the continuing jurisdiction

of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation  
for default  
of fees

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. 1974, c. 47, s. 22.

Council of  
College

**23.**—(1) The Board of Directors of the College is continued as the Council of the College, which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition  
of Council

(2) The Council shall be composed of,

- (a) not fewer than nine and not more than twelve persons who are members elected in the number and manner determined by the regulations;
- (b) not fewer than three and not more than five persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and
- (c) one person who is appointed by the faculty of dentistry of each university in Ontario that conducts a course in dentistry and is authorized to grant degrees in dentistry, such person to be appointed from among the members of the faculty.

Remunera-  
tion of lay  
members

(3) The persons appointed under clause (2) (b) shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration  
of appoint-  
ment

(4) The appointment of every person appointed under subsection (2) expires at the first meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifica-  
tions to  
vote

(5) Every member who,

- (a) practises in Ontario; and
- (b) is not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect a President and Vice-President from among its members. President  
and Vice-  
President

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College. Registrar  
and staff

(8) A majority of the members of the Council constitutes a quorum. 1974, c. 47, s. 23 (1-8). Quorum

**24.** In addition to his powers and duties under Part I, the Minister may, Powers of  
Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1974, c. 47, s. 24.

**25.** Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations, Regu-  
lations

- (a) fixing the number of members to be elected to the Council and establishing electoral districts and regional representation for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of

licences or any class thereof and prescribing the terms and conditions thereof;

- (f) providing for the maintenance and inspection of registers of persons permitted to practise;
- (g) governing standards of practice for the profession;
- (h) prescribing the records that shall be kept respecting patients;
- (i) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (j) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (k) defining classes of specialists in the various branches of dentistry, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles or designations by members indicating specialization in any branch of dentistry;
- (l) authorizing persons other than members to perform specified acts in the practice of dentistry under the supervision or direction of a member;
- (m) prohibiting the practice of dentistry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups

- or associations of members in respect of their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics, for any purpose that may tend to advance scientific knowledge and maintain the standards of practice of dentistry;
- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms for the purposes of this Part and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable. 1974, c. 47, s. 25.

**26.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;

- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (i) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (j) providing for a code of ethics;
- (k) providing for the appointment of inspectors for the purposes of this Part;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in any national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection (1) and <sup>Idem</sup> amendments thereto,

(a) shall be forwarded to the Minister; and

(b) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose. 1974, c. 47, s. 26. <sup>Signing by-laws and resolutions</sup>

**27.**—(1) Where a prosthetic denture is supplied, altered or repaired by a member or under the supervision of a member as set out in subsection 4 (8) of the *Denture Therapists Act*, the laboratory costs incurred in respect of the supplying, altering or repairing of the prosthetic denture and all fees for services in respect thereof shall be rendered by the member and the account therefor shall show such laboratory costs separately from such fees and separately from all other charges and fees. <sup>Billing for prosthetic dentures R.S.O. 1980, c. 115</sup>

(2) No person is liable to pay an account to which subsection (1) applies until the account is made to comply with the requirements of subsection (1). 1974, c. 47, s. 27. <sup>Liability for payment</sup>

**28.**—(1) No person shall engage in or hold himself out as engaging in the practice of dentistry unless he is licensed under this Part. <sup>Licence to practise</sup>

(2) For the purposes of subsection (1), proof of the performance of one act in the practice of dentistry on one occasion is sufficient to establish engaging in the practice of dentistry. <sup>Proof of practice</sup>

(3) Subsection (1) does not apply to a student of dentistry who practises dentistry within a prescribed training program under the supervision of a member who is physically present. <sup>Exception re students</sup>

(4) Nothing done in the practice of denture therapy or the practice of supervised denture therapy as defined in the *Denture Therapists Act* by a denture therapist licensed or provisionally licensed thereunder shall be deemed to be a contravention of this section. <sup>Idem</sup>

Conflict  
with other  
health  
discipline

(5) A licence shall be deemed to authorize a member to engage in the practice of dentistry, notwithstanding that any part of such practice is included in the practice of any other health discipline.

Application  
of Part VI

(6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations. 1974, c. 47, s. 28.

Establish-  
ment of  
committees

**29.**—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum. 1974, c. 47, s. 29.

Dentistry  
Review  
Committee  
R.S.O. 1980,  
c. 197

(3) The Council may give the Dentistry Review Committee under the *Health Insurance Act* such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act. 1975, c. 63, s. 1.

Executive  
Committee

**30.**—(1) The Executive Committee shall be composed of the President and Vice-President of the Council and not more than three other members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum

(2) A majority of the members of the Executive Committee constitutes a quorum.

Duties

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law. 1974, c. 47, s. 30.

**31.**—(1) The Registration Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. Registration Committee

(2) The Council shall name one member of the Registration Committee to be chairman. Chairman

(3) A majority of the members of the Registration Committee constitutes a quorum. 1974, c. 47, s. 31. Quorum

**32.**—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached. Issuance of licences

(2) The Registration Committee,

Powers and  
duties of  
Registration  
Committee

(a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fee therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any licensing requirement.

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies. Idem

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the committee specifies. Review of qualifications

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise dentistry, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall Registers of licensees

note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs. 1974, c. 47, s. 32.

Continuation  
of licences  
R.S.O. 1970,  
c. 108

**33.** Every licence issued under *The Dentistry Act*, being chapter 108 of the Revised Statutes of Ontario, 1970, and in effect immediately before the 14th day of July, 1975, continues in the same manner as if issued under this Part. 1974, c. 47, s. 33.

Complaints  
Committee

**34.**—(1) The Complaints Committee shall be composed of three persons who are members of the Council, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

(4) A majority of the members of the Complaints Committee constitutes a quorum. 1974, c. 47, s. 34.

Duties

**35.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection (2) unless,

(a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 38; or

(b) direct that the matter not be referred under clause (a); or

- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause (2) (b), its reasons therefor. 1974, c. 47, s. 35. <sup>Decision and reasons</sup>

**36.**—(1) The Discipline Committee shall be composed of eight members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council. <sup>Discipline Committee</sup>

(2) The Council shall appoint one of the members of the Discipline Committee to be chairman. <sup>Chairman</sup>

(3) The Chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council. <sup>Composition of panels</sup>

(4) Three members of a panel assigned under subsection (3), of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing. <sup>Quorum and votes</sup>

(5) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence. <sup>Disability of lay member</sup>

(6) Notwithstanding section 35, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. 1974, c. 47, s. 36. <sup>Reference by Council or Executive Committee</sup>

**37.**—(1) The Discipline Committee shall, <sup>Duties of Discipline Committee</sup>

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 35, 36 or 39; and
- (c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall, <sup>Idem</sup>

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional  
misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise upon proof of such conviction; or
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incom-  
petence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

Powers of  
Discipline  
Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the

member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes. Costs

(7) Where the Discipline Committee revokes, suspends or restricts a licence or recognition of specialist status on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision. Stay on appeal for incompetence

(8) Where the Discipline Committee revokes, suspends or restricts the licence or recognition of specialist status of a member on a ground other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned. Stay on appeal for professional misconduct

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. Service of decision of Discipline Committee

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1974, c. 47, s. 37. Continuation on expiry of Committee membership

**38.—(1)** In this section,

Interpretation

- (a) "board of inquiry" means a board of inquiry appointed by the Executive Committee under subsection (2);
- (b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the

interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference  
to board of  
inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examina-  
tion

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

Hearing by  
Regist-  
ration  
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to a proceeding under this section.

Medical  
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified

medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

- (7) The Registration Committee shall, after the hearing, Powers of Registration Committee
- (a) make a finding as to whether or not the member is an incapacitated member; and
  - (b) where the member is found to be an incapacitated member by order,
    - (i) revoke his licence,
    - (ii) suspend his licence for such period as the Committee considers appropriate, or
    - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, with necessary modifications, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision. 1974, c. 47, s. 38. Procedures

**39.**—(1) A person whose licence has been revoked or suspended for cause under this Part, or a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension. Restoration of licence

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member. Reference to Discipline Committee

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply, with necessary modifications, to proceedings of the Registration Committee and Discipline Committee under this section. 1974, c. 47, s. 39. Procedures

Investigation of members

**40.**—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,  
c. 411

Obstruction of investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search warrant

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Removal of books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall

be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Admissibility  
of copies

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other committee as he considers appropriate. 1974, c. 47, s. 40.

Report of  
Registrar

**41.**—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 40 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 40 and shall not communicate any such matters to any other person except,

Matters  
confidential

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;

(b) as may be required for the enforcement of the *Health Insurance Act*;

R.S.O. 1980,  
c. 197

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. 1974, c. 47, s. 41.

Testimony  
in civil  
suit

**42.**—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Restraining  
orders

## Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 47, s. 42.

## Penalties

**43.**—(1) Every person who is in contravention of section 28 is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 47, s. 43 (1).

Idem,  
use of  
titles

(2) Subject to the provisions of Parts III and V, any person not licensed under this Part who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is licensed or registered under this Part or that he is qualified or recognized by law or otherwise as a dentist, dental surgeon, oral surgeon, orthodontist, pedodontist, periodontist, oral pathologist, endodontist or any other designated specialties in the practice of dentistry, or who assumes, uses or employs the description or the title "dentist", "doctor" or "dental surgeon", or any affix or prefix indicative of such titles or qualifications as an occupational designation relating to the treatment of human ailments or physical defects or advertises or holds himself out as such is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. 1975, c. 63, s. 2.

## Idem

(3) Any person who obstructs a person appointed to make an investigation under section 40 in the course of his duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. 1974, c. 47, s. 43 (3).

Regulations  
re dental  
hygienists

**44.** Subject to the approval of the Lieutenant Governor in Council, the Council may make regulations,

- (a) providing for the establishment, development, regulation and control of an ancillary body known as dental hygienists;
- (b) regulating the conditions and prescribing the qualifications for admission to such body;
- (c) prescribing the admission and annual fees payable by members of such body;
- (d) generally for the defining, regulating and controlling of the practice of dental hygiene. R.S.O. 1970, c. 108, s. 12, *revised*.

PART III

MEDICINE

- 45.—(1) In this Part,

Interpre-  
tation

(a) “by-laws” means the by-laws made under this Part;

(b) “College” means the College of Physicians and Surgeons of Ontario;

(c) “Council” means the Council of the College;

(d) “licence” means a licence for the practice of medicine issued under this Part;

(e) “member” means a member of the College;

(f) “practice of medicine” includes the practice of surgery and obstetrics;

(g) “prescribed” means prescribed by the regulations or by-laws made under this Part;

(h) “Registrar” means the Registrar of the College;

(i) “regulations” means the regulations made under this Part.
- (2) The practice of medicine is a health discipline to which this Part applies. 1974, c. 47, s. 45.

Health  
discipline
- 46.—(1) The College of Physicians and Surgeons of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

College of  
Physicians  
and Surgeons  
continued
- (2) The objects of the College are,

Objects

(a) to regulate the practice of medicine and to govern its members in accordance with this Act, the regulations and the by-laws;

(b) to establish, maintain and develop standards of knowledge and skill among its members;

(c) to establish, maintain and develop standards of qualification and practice for the practice of medicine;

(d) to establish, maintain and develop standards of professional ethics among its members;

- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.  
1974, c. 47, s. 46.

Membership  
in the  
College

**47.**—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

Resignation  
of  
membership

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Cancellation  
for default  
of fees

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct as a member. 1974, c. 47, s. 47.

Council of  
the College

**48.**—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

Composition  
of Council

(2) The Council shall be composed of,

- (a) one person who is appointed by the faculty of medicine of each university in Ontario that conducts a course in medicine and is authorized to grant degrees in medicine, such person to be appointed from among the members of the faculty;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and are appointed by the Lieutenant Governor in Council; and
- (c) not fewer than twelve and not more than sixteen persons who are members and are elected by the members in the manner provided by the regulations.

(3) The persons appointed under clause (2) (b) shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Remuneration  
of lay  
members

(4) The appointment of every person appointed under subsection (2) expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Expiration  
of appointment

(5) Every member who is,

Qualifications  
to vote

(a) resident in Ontario;

(b) licensed to practise medicine and not limited to practising for educational purposes only; and

(c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

(6) The Council shall elect annually a President and Vice-President from among its members.

President  
and Vice-  
President

(7) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College.

Registrar  
and  
officers

(8) A majority of the members of the Council constitutes a quorum. 1974, c. 47, s. 48 (1-8).

Quorum

**49.** In addition to his powers and duties under Part I, the Minister may,

Powers of  
Minister

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1974, c. 47, s. 49.

Regu-  
lations

**50.** Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council and establishing electoral districts for elections;
- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) defining classes of specialists in the various branches of medicine, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles or designations by members indicating specialization in any branch of medicine;
- (i) regulating the compounding, dispensing and sale of drugs by members and the containers and labelling therefor, prescribing the records that shall be kept and requiring reports to the Minister respecting such compounding, dispensing and sale;
- (j) governing the designation of life members of the College and prescribing their rights and privileges;
- (k) authorizing persons other than members to perform specified acts in the practice of medicine under the supervision or direction of a member;

- (*l*) prohibiting the practice of medicine where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (*m*) defining professional misconduct for the purposes of this Part;
- (*n*) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (*o*) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (*p*) prescribing the minimum number of members who may constitute a clinic and the minimum range of medical services that shall be provided in a clinic;
- (*q*) respecting the reporting and publication of decisions in disciplinary matters;
- (*r*) requiring and providing for the inspection and examination of books, accounts, reports and medical records of members in connection with their practice;
- (*s*) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (*t*) respecting the duties and authority of the Registrar;
- (*u*) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (*v*) prescribing forms and providing for their use;
- (*w*) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable. 1974, c. 47, s. 50.

**51.—**(1) The Council may pass by-laws relating to the <sup>By-laws</sup> administrative and domestic affairs of the College not incon-

sistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;

- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

(2) A copy of the by-laws made under subsection (1) and <sup>Idem</sup> amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

(3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting <sup>Signing by-law and resolutions</sup> of the Council duly called, constituted and held for the purpose. 1974, c. 47, s. 51.

**52.**—(1) No person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed <sup>Licence to practise</sup> under this Part.

(2) For the purposes of subsection (1), Exceptions

- (a) rendering first aid or temporary assistance in an emergency without fee; or

- (b) the administration of household remedies by members of the patient's household,

shall be deemed not to be engaging in the practice of medicine.

Students  
excepted

(3) Subsection (1) does not apply to a student of medicine engaging in a curriculum of studies at a medical school in a university in Ontario.

Proof of  
practice

(4) For the purposes of this section, proof of the performance of one act in the practice of medicine on one occasion is sufficient to establish engaging in the practice of medicine.

Conflict  
with other  
health  
discipline

(5) A member or person authorized by the regulations may engage in the practice of medicine, notwithstanding that any part of such practice is included in the practice of any other health discipline.

Application  
of Part VI

(6) Part VI does not apply in respect of the compounding and dispensing and sale of drugs by a member for his own patients in accordance with this Part and the regulations.

Faith  
healing

(7) Nothing in this Part shall be construed to affect the treatment of human ailments by the use of prayer or spiritual means in the exercise of a religion in accordance with the tenets of an established church by the members thereof. 1974, c. 47, s. 52.

Establish-  
ment of  
committees.

**53.**—(1) The Council shall establish and appoint as herein-after provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee;
- (e) Fitness to Practise Committee,

and may establish such other committees as the Council from time to time considers necessary.

Medical  
Review  
Committee  
R.S.O. 1980,  
c. 197

(2) The Council may give the Medical Review Committee under the *Health Insurance Act* such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act.

Vacancies

(3) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their

number is not fewer than the prescribed quorum. 1974, c. 47, s. 53.

**54.**—(1) The Executive Committee shall be composed of, <sup>Executive Committee</sup>

- (a) the President, who shall be chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Com-Quorum mittee constitutes a quorum.

(3) The Executive Committee shall perform such functions <sup>Duties</sup> of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law. 1974, c. 47, s. 54.

**55.**—(1) The Registration Committee shall be composed of, <sup>Registration Committee</sup>

- (a) one member of the Council who was appointed to the Council by a university;
- (b) two members of the Council who were elected to the Council;
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (d) the President and Vice-President, *ex officio*.

(2) The Council shall name one member of the Registration <sup>Chairman</sup> Committee to be chairman.

(3) A majority of the members of the Registration Com-Quorum mittee constitutes a quorum. 1974, c. 47, s. 55.

**56.**—(1) The Registrar shall issue a licence to any <sup>Issuance of licences</sup> applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the

Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and  
duties of  
Regist-  
ration  
Committee

(2) The Registration Committee,

(a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any licensing requirement

Idem

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

Review of  
qualifi-  
cations

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers  
of  
licensees

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise medicine, identifying any specialist status and the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence or recognition of specialist status and such other information as the Registration Committee or Discipline Committee directs.

Continuation  
of licences  
R.S.O. 1970,  
c. 268

(6) Every licence issued under *The Medical Act*, being chapter 268 of the Revised Statutes of Ontario, 1970 and in effect immediately before the 14th day of July, 1975 continues in the same manner as if issued under this Part. 1974, c. 47, s. 56.

Complaints  
Committee

**57.**—(1) The Complaints Committee shall be composed of,

(a) two persons who are members of the College;

(b) one member of the Council who was appointed to the Council by a university;

(c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee. <sup>Idem</sup>

(3) The Council shall name one member of the Complaints Committee to be its chairman. <sup>Chairman</sup>

(4) A majority of the members of the Complaints Committee constitutes a quorum. 1974, c. 47, s. 57. <sup>Quorum</sup>

**58.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection (2) unless, <sup>Duties</sup>

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it receives may, <sup>Idem</sup>

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 62; or
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause (2) (b), its reasons therefor. 1974, c. 47, s. 58. <sup>Decision and reasons</sup>

**59.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council. <sup>Discipline Committee</sup>

Chairman (2) The Council shall appoint one of the members of the Discipline Committee to be chairman.

Composition of panels (3) The Chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Disability of lay member (4) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Quorum and votes (5) Three members of a panel assigned under subsection (3), of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

Reference by Council or Executive Committee (6) Notwithstanding section 58, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. 1974, c. 47, s. 59.

Duties of Discipline Committee

**60.**—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 58, 59 or 63; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;

- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional misconduct by the Committee if, Profes-  
sional  
misconduct

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) if his rights or privileges under the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada) or the regulations under either of them have been restricted or withdrawn, unless by his own request, upon proof thereof; or R.S.C. 1970,  
cc. N-1,  
F-27
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice. In-  
competence

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of  
Discipline  
Committee

- (a) revoke the licence of the member, or withdraw recognition of his specialist status, or both;
- (b) suspend the licence of the member or recognition of his specialist status, or both, for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the

member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

Stay on  
appeal for  
incompetence

(7) Where the Discipline Committee revokes, suspends or restricts a licence or recognition of specialist status on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on  
appeal for  
professional  
misconduct

(8) Where the Discipline Committee revokes, suspends or restricts the licence or recognition of specialist status of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of  
decision of  
Discipline  
Committee

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation  
on expiry of  
Committee  
membership

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1974, c. 47, s. 60.

Fitness to  
Practise  
Committee

**61.—**(1) The Fitness to Practise Committee shall be composed of twelve persons, of whom at least four shall be members of the Council and eight may be members of the College who are not members of the Council.

Chairman

(2) The Council shall appoint one of the members of the Fitness to Practise Committee who is a member of the Council to be chairman of the Committee.

(3) The chairman of the Fitness to Practise Committee may assign a panel of three members to hold a hearing, of whom at least one shall be a member who is a member of the Council, and such panel constitutes a quorum of the Committee for a hearing. Composition of panels and quorum

(4) All decisions of the Fitness to Practise Committee require the vote of a majority of the members presiding at the hearing. 1974, c. 47, s. 61. Votes

**62.—**(1) In this section,

Interpretation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter. Reference to board of inquiry

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies. Examination

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Fitness to Practise Committee to hold a hearing and may suspend the member’s licence until the determination of the question of his capacity becomes final. Hearing by Fitness to Practise Committee

(5) The College, the person whose capacity is being investigated and any other person specified by the Fitness to Parties

Practise Committee are parties to a proceeding under this section.

Medical  
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of  
Fitness to  
Practise  
Committee

(7) The Fitness to Practise Committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
  - (i) revoke his licence,
  - (ii) suspend his licence for such period as the Committee considers appropriate, or
  - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

Procedures

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, with necessary modifications, to proceedings of the Fitness to Practise Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision. 1974, c. 47, s. 62.

**63.**—(1) A person whose licence has been revoked or suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension. Restoration of licence

(2) The Registrar shall refer the application to the Discipline Committee or, when the revocation or suspension was on the grounds of incapacity, to the Fitness to Practise Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member. Reference to Discipline Committee

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply, with necessary modifications, to proceedings of the Fitness to Practise Committee and Discipline Committee under this section. Procedures

(4) Notwithstanding subsections (1), (2) and (3), the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate. 1974, c. 47, s. 63. Direction by Council to issue licence

**64.**—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar. Investigation of members

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. Powers of investigator

R.S.O. 1980, c. 411

Obstruction  
of  
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search  
warrant

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Removal of  
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admis-  
sibility  
of copies

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Report of  
Registrar

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he considers appropriate. 1974, c. 47, s. 64.

Matters  
con-  
fidential

**65.**—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 64, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his

duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or

(b) as may be required for the enforcement of the *Health Insurance Act*;

R.S.O. 1980,  
c. 197

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. 1974, c. 47, s. 65.

Testimony  
in civil  
suit

**66.**—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Restraining  
orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 47, s. 66.

Appeal

**67.**—(1) Every person who is in contravention of section 52 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 47, s. 67 (1).

Penalties

(2) Subject to the provisions of Parts II and V, any person not licensed under this Part who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is licensed or registered under this Part or that he is recognized by law or otherwise as a physician, surgeon, accoucheur or a licentiate in medicine, surgery or midwifery, or who assumes, uses or employs the

Idem,  
use of  
titles

description or title "doctor", "surgeon" or "physician" or any affix or prefix indicative of such titles or qualifications as an occupational designation relating to the treatment of human ailments or physical defects, or advertises or holds himself out as such, is guilty of an offence and on conviction is liable for the first offence to a fine or not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. 1975, c. 63, s. 3.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 64 in the course of his duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. 1974, c. 47, s. 67 (3).

## PART IV

### NURSING

Inter-  
pre-  
tation

#### 68.—(1) In this Part,

- (a) "by-laws" means the by-laws made under this Part;
- (b) "certificate" means a current certificate issued under this Part authorizing the holder to hold himself out as competent to practise as a registered nurse or registered nursing assistant;
- (c) "College" means the College of Nurses of Ontario;
- (d) "Council" means the Council of the College;
- (e) "Director" means the Director of the College;
- (f) "member" means a member of the College;
- (g) "register" means a register maintained by the Director under this Part, and "registered" and "registration" have corresponding meanings;
- (h) "registered nurse" and "registered nursing assistant" means a person who is the holder of a certificate as a registered nurse or registered nursing assistant, respectively;
- (i) "regulations" means the regulations made under this Part.

Health  
discipline

(2) The performance of nursing services by a registered nurse or a registered nursing assistant is a health discipline to which this Part applies. 1974, c. 47, s. 69.

**69.**—(1) The College of Nurses of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part. College of  
Nurses of  
Ontario  
continued

(2) The objects of the College are,

Objects

- (a) to regulate the practice of nursing and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of nursing;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;
- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.  
1974, c. 47, s. 70.

**70.**—(1) Every person who is the holder of a certificate is a member of the College subject to any term, condition or limitation to which his certificate is subject. Membership  
in the  
College

(2) A member may resign his membership by filing with the Director his resignation in writing and his certificate is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. Resignation  
of member-  
ship

(3) The Director may cancel a certificate for non-payment of any prescribed fee after giving the member at least one month's notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. 1974, c. 47, s. 71. Cancellation  
for default  
of fees

**71.**—(1) The Council of the College is continued and shall be the governing body and board of directors of the College and shall manage and administer its affairs. Council of  
the College

Composition  
of Council

(2) The Council shall be composed of,

- (a) not fewer than eighteen and not more than twenty-five persons, consisting of registered nurses and registered nursing assistants in the proportions determined by the regulations, who are resident or employed in Ontario and are elected by the members in the manner provided by the regulations; and
- (b) not fewer than six and not more than eight persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.

Remunera-  
tion of lay  
appointees

(3) The persons appointed under clause (2) (b) shall be paid out of moneys appropriated therefor by the Legislature such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Expiration  
of appoint-  
ment

(4) The appointment of every person appointed under subsection (2) expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifica-  
tions to  
vote

(5) Every member who is,

- (a) resident or employed in Ontario; and
- (b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

President  
and Vice-  
President

(6) The Council shall elect annually a President and Vice-President from among its members.

Director  
and staff

(7) The Council shall appoint during pleasure a Director and such other officers as may from time to time be necessary in the opinion of the Council to perform the work of the College and the Director shall be deemed to be the Registrar for the purposes of Part I.

Meetings  
of Council

(8) The Council shall meet at least twice a year.

Quorum

(9) A majority of the members of the Council constitutes a quorum. 1974, c. 47, s. 72 (1-9).

**72.** In addition to his powers and duties under Part I, <sup>Powers of Minister</sup> the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1974, c. 47, s. 73.

**73.** Subject to the approval of the Lieutenant Governor <sup>Regulations</sup> in Council and with prior review by the Minister, the Council may make regulations,

- (a) fixing the number of members to be elected to the Council, the proportions thereof who shall be registered nurses and registered nursing assistants and establishing the regional and other representation for elections;
- (b) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing the requirements and qualifications for the issuing and renewal of certificates;
- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for the profession;
- (g) prohibiting the practice of nursing by members where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (h) defining professional misconduct for the purposes of this Part;

- (i) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (j) respecting the reporting and publication of decisions in disciplinary matters;
- (k) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (l) respecting the duties and authority of the Director;
- (m) requiring the payment of annual fees by members and fees for certification and examinations, and prescribing the amounts thereof;
- (n) prescribing forms and providing for their use;
- (o) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable. 1974, c. 47, s. 74.

**By-laws**

**74.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;

- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (r) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Distribution  
of by-laws

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each member; and

(c) shall be available for public inspection in the office of the College. 1974, c. 47, s. 75.

Use of  
titles

**75.**—(1) No person shall hold himself out as competent to practise as a registered nurse or as a registered nursing assistant or otherwise as the holder of a certificate under this Part unless such person is the holder of the appropriate certificate under this Part.

Idem

(2) No person shall use the title "registered nurse" or the designation "Reg.N." or "R.N." or other designation representing the title unless such person is the holder of a certificate as a registered nurse under this Part.

Idem

(3) No person shall use the title "registered nursing assistant" or the designation "R.N.A." or other designation representing the title unless such person is the holder of a certificate as a registered nursing assistant under this Part. 1974, c. 47, s. 76.

Establish-  
ment of  
committees

**76.**—(1) The Council shall establish and appoint as herein-after provided the following committees,

(a) Executive Committee;

(b) Registration Committee;

(c) Complaints Committee;

(d) Discipline Committee,

and the appointments thereto shall include representation of both registered nurses and registered nursing assistants.

Other  
Committees

(2) The Council may establish such other committees as the Council from time to time considers necessary.

Vacancies

(3) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum. 1974, c. 47, s. 77.

**77.**—(1) The Executive Committee shall be composed of, Executive Committee

- (a) the President, who shall be chairman of the Committee;
- (b) the Vice-President; and
- (c) three persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Executive Committee shall perform such functions Duties of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law.

(3) A majority of the members of the Executive Committee Quorum constitutes a quorum. 1974, c. 47, s. 78.

**78.**—(1) The Registration Committee shall be composed Registration Committee of nine persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall name one member of the Registration Chairman Committee to be chairman.

(3) A majority of the members of the Registration Com- Quorum mittee constitutes a quorum.

(4) The Registration Committee shall submit an annual Reports report of its activities to the Council and may make such other reports to the Council and Executive Committee as it considers appropriate. 1974, c. 47, s. 79.

**79.**—(1) The Director shall issue a certificate or renewal Issuance of certificates thereof to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Director shall refer to the Registration Committee every application for a certificate or renewal thereof that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant

Powers and duties of Registration Committee

to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

(b) may exempt an applicant from any requirement for certification.

Conditions of  
certificates

(3) The Registration Committee may direct the Director to issue or refuse to issue certificates and renewals or to issue certificates and renewals subject to such terms, conditions and limitations as the Committee specifies.

Refusal  
to renew

(4) For the purposes of Part I, a refusal to renew a certificate shall be deemed to be a refusal to grant the certificate.

Review of  
qualifi-  
cations

(5) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers

(6) The Director shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms, conditions and limitations attached to the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Registration Committee or Discipline Committee directs.

Continuance  
of registra-  
tion under  
R.S.O. 1970,  
c. 301

(7) Every person who was registered as a registered nurse or a registered nursing assistant under *The Nurses Act*, being chapter 301 of the Revised Statutes of Ontario, 1970, immediately before the 14th day of July, 1975 shall be deemed to be the holder of a certificate under this Part until it expires or is revoked, suspended or cancelled under this Part. 1974, c. 47, s. 80.

Complaints  
Committee

**80.**—(1) The Complaints Committee shall be composed of five persons who are members of the Council, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Membership  
in other  
Committees

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

(4) Three members of the Complaints Committee constitute <sup>Quorum</sup> a quorum. 1974, c. 47, s. 81.

**81.**—(1) The Complaints Committee shall consider and <sup>Duties</sup> investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Director and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it <sup>Idem</sup> receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 84; or
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Director for the purposes of section 8 and, where the decision is <sup>Decision and reasons</sup> made under clause (2)(b), its reasons therefor. 1974, c. 47, s. 82.

**82.**—(1) The Discipline Committee shall be composed of <sup>Discipline Committee</sup> ten persons who are members of the Council, of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) Five or more members of the Discipline Committee, <sup>Quorum and votes</sup> of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability  
of lay  
member

(3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Chairman

(4) The Council shall name one member of the Discipline Committee to be chairman.

Reference by  
Council or  
Executive  
Committee

(5) Notwithstanding section 81, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. 1974, c. 47, s. 83.

Duties of  
Discipline  
Committee

**83.**—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 81, 82 or 85; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional  
misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;

(b) he is in contravention of subsection 75 (1); or

(c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order, Powers of Discipline Committee

(a) revoke the certificate of the member;

(b) suspend the certificate of the member for a stated period;

(c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;

(d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;

(e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

(f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes. Costs

(7) Where a certificate is suspended or restricted for a period under subsection (5), the suspension or restriction applies in respect of any renewal or right to renewal of the certificate for the duration of the period. Expiration of suspended or restricted certificate

Stay on  
appeal for  
incompetence

(8) Where the Discipline Committee revokes, suspends or restricts a certificate on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on  
appeal for  
professional  
misconduct

(9) Where the Discipline Committee revokes, suspends or restricts the certificate of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of  
decision of  
Discipline  
Committee

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation  
on expiry of  
Committee  
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1974, c. 47, s. 84.

Interpre-  
tation

**84.—**(1) In this section,

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference  
to board of  
inquiry

(2) Where the Director receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to sub-

mit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his certificate be suspended until he complies.

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of any medical report obtained under subsection (3) to the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his capacity becomes final. Hearing by  
Registration  
Committee

(5) The board of inquiry, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to a proceeding under this section. Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding, Medical  
evidence

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Registration Committee shall, after the hearing, Powers of  
Registration  
Committee

(a) make a finding as to whether or not the member is an incapacitated member; and

(b) where the member is found to be an incapacitated member, by order,

- (i) revoke his certificate,
- (ii) suspend his certificate for such period as the Committee considers appropriate, or
- (iii) attach such terms and conditions to the certificate as the Committee considers appropriate.

## Procedures

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, with necessary modifications, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision. 1974, c. 47, s. 85.

Restoration  
of regis-  
tration or  
certificate

**85.**—(1) A person whose certificate has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Director for the issuance of a certificate or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation, or where the suspension is for more than one year, one year after the suspension.

Reference to  
Discipline  
Committee

(2) The Director shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

## Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply, with necessary modifications, to proceedings of the Registration Committee and Discipline Committee under this section. 1974, c. 47, s. 86.

Duties of  
employers  
of registered  
nurses

**86.**—(1) Every person, other than a patient, who employs a person as a registered nurse or registered nursing assistant and every agency or registry that procures employment for a person as a registered nurse or registered nursing assistant,

- (a) shall ensure that such person is the holder of an appropriate certificate under this Part; and
- (b) shall report to the College within thirty days any termination of such employment for reasons purport-

ing to constitute professional misconduct, incompetence or incapacity. 1974, c. 47, s. 87; 1975, c. 63, s. 4.

**87.**—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 47, s. 88. Appeal

**88.**—(1) Every person who is in contravention of section 75 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. Penalties

(2) Every person who is in contravention of section 86 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. 1974, c. 47, s. 89. Idem

## PART V

### OPTOMETRY

**89.**—(1) In this Part,

Interpretation

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Optometrists of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of optometry issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of optometry” means the services usually performed by an optometrist, including the measure-

ment and assessment of vision, other than by the use of drugs, except such drugs for such purposes as are prescribed by the regulations, the prescribing and dispensing of ophthalmic appliances, and prescribing and providing orthoptics for the relief or correction of any visual or muscular error or defect of the eye;

(g) "Registrar" means the Registrar of the College;

(h) "regulations" means the regulations made under this Part.

Health  
discipline

(2) The practice of optometry is a health discipline to which this Part applies. 1974, c. 47, s. 91.

College of  
Optometrists  
of Ontario  
continued

**90.**—(1) The College of Optometrists of Ontario is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

Objects

(2) The objects of the College are,

(a) to regulate the practice of optometry and to govern its members in accordance with this Act, the regulations and the by-laws;

(b) to establish, maintain and develop standards of knowledge and skill among its members;

(c) to establish, maintain and develop standards of qualification and practice for the practice of optometry;

(d) to establish, maintain and develop standards of professional ethics among its members;

(e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected. 1974, c. 47, s. 92.

Membership  
in the  
College

**91.**—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject.

Resignation of  
membership

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is

thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. 1974, c. 47, s. 93.

**92.**—(1) The Board of Directors of the College is continued as the Council of the College which shall be the governing body and board of directors of the College and shall manage and administer its affairs.

(2) The Council shall be composed of,

(a) one person who is appointed by the University of Waterloo from the faculty of the School of Optometry;

(b) three persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice and are appointed by the Lieutenant Governor in Council; and

(c) six persons who are members and are elected by the members in the manner provided by the regulations.

(3) The persons appointed under clause (2) (b) shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

(4) The appointment of every person appointed under subsection (2) shall be for a term not exceeding three years, and a person whose appointment expires is eligible for re-appointment.

(5) Every member who is,

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

President  
and Vice-  
President

(6) The Council shall elect annually a President and Vice-President from among its members.

Registrar,  
Treasurer,  
Secretary  
and staff

(7) The Council shall appoint during pleasure a Registrar, Treasurer, Secretary and such other officers and servants as may from time to time be necessary in the opinion of the Council to perform the work of the College.

Quorum

(8) A majority of the members of the Council constitutes a quorum. 1974, c. 47, s. 94 (1-8).

Powers of  
Minister

**93.** In addition to his powers and duties under Part I, the Minister may,

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1974, c. 47, s. 95.

Regulations

**94.** Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

- (a) establishing electoral districts for the purposes of the election of members to the Council and respecting and governing the qualifications, nomination, election and term of office of the members to be elected, and controverted elections;
- (b) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (c) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (d) prescribing classes of licences and governing the requirements and qualifications for the issuing of

licences or any class thereof and prescribing the terms and conditions thereof;

- (*e*) providing for the maintenance and inspection of registers of persons permitted to practise;
- (*f*) governing standards of practice for the profession;
- (*g*) prescribing drugs that may be used in the practice of optometry for such purposes as are specified;
- (*h*) providing for the designation of life members of the College and prescribing their rights and privileges;
- (*i*) authorizing persons other than members to perform specified acts in the practice of optometry under the supervision or direction of a member;
- (*j*) prohibiting the practice of optometry where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (*k*) defining professional misconduct for the purposes of this Part;
- (*l*) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (*m*) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standard of practice in the profession and reporting thereon to the Council and examining and assessing the standards of practice, qualifications and continuing education of members and making recommendations to the Registration Committee thereon;
- (*n*) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (*o*) respecting the reporting and publication of decisions in disciplinary matters;
- (*p*) providing for the compilation of statistical information on the supply, distribution and professional

activities of members and requiring members to provide the information necessary to compile such statistics;

- (*g*) respecting the duties and authority of the Registrar;
- (*r*) requiring and providing for the inspection and examination of the office, records and equipment of members in connection with their practice;
- (*s*) prescribing the records that shall be kept respecting patients;
- (*t*) requiring the payment of annual fees by members and fees for licensing, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (*u*) prescribing forms and providing for their use;
- (*v*) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable. 1974, c. 47, s. 96.

By-laws

**95.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (*a*) prescribing the seal of the College;
- (*b*) providing for the execution of documents by the College;
- (*c*) respecting banking and finance;
- (*d*) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (*e*) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;

- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;
- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (r) providing for the appointment of inspectors for the purposes of this Part;
- (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Confirmation  
of by-laws

(2) A by-law is effective when it is passed by the Council but expires with the close of the next annual meeting of members of the College held after its passing, unless it is confirmed by the meeting.

Distribution  
of by-laws

(3) A copy of the by-laws made under subsection (1) and amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College. 1974, c. 47, s. 97.

Licence to  
practise

**96.**—(1) No person shall engage in or hold himself out as engaging in the practice of optometry unless he is licensed under this Part.

Exceptions

(2) Subsection (1) does not apply to,

- (a) a student enrolled in the School of Optometry at the University of Waterloo who practices optometry as required by the curriculum under the supervision of a member of the faculty or a member of the College;
- (b) an applicant for a licence under this Part who practises optometry under the personal supervision of a member of the College for the purpose of completing qualifying studies or clinical experience required under this Part.

Proof of  
practice

(3) For the purposes of subsection (1), proof of the performance of one act in the practice of optometry on one occasion is sufficient to establish engaging in the practice of optometry.

Conflict with  
other health  
discipline

(4) A member or person authorized by the regulations may engage in the practice of optometry, notwithstanding that any part of such practice is included in the practice of any other health discipline. 1974, c. 47, s. 98.

Use of  
certain drugs  
prohibited

**97.** No member shall use drugs in his practice, except such drugs for such purposes as are prescribed by the regulations. 1974, c. 47, s. 99.

Establish-  
ment of  
committees

**98.**—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee;
- (c) Complaints Committee;
- (d) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum. 1974, c. 47, s. 100. Vacancies

(3) The Council may give the Optometry Review Committee under the *Health Insurance Act* such other duties as the Council considers appropriate and that are not inconsistent with its duties under that Act. 1975, c. 63, s. 5. Optometry  
Review  
Committee  
R.S.O. 1980,  
c. 197

**99.**—(1) The Executive Committee shall be composed of three persons who are members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council. Executive  
Committee

(2) Two members of the Executive Committee constitute a quorum. Quorum

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law. 1974, c. 47, s. 101. Duties

**100.**—(1) The Registration Committee shall be composed of, Registration  
Committee

(a) two members of the Council of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council; and

(b) two members of the College of whom one shall be a member of the faculty of the School of Optometry of the University of Waterloo.

(2) The Council shall name one member of the Registration Committee to be chairman. Chairman

(3) A majority of the members of the Registration Committee constitutes a quorum. 1974, c. 47, s. 102. Quorum

**101.**—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regula- Issuance of  
licences

tions and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and  
duties of  
Registration  
Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any licensing requirement.

Idem

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

Review of  
qualifi-  
cations

(4) The Registration Committee may review the qualifications of any member and may impose a term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers of  
licensees

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise optometry, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

Continuance  
of registration  
under R.S.O.  
1970, c. 335

(6) Every person who was registered as an optometrist under *The Optometry Act*, being chapter 335 of the Revised Statutes of Ontario, 1970, immediately before the 14th day of July, 1975 shall be deemed to be the holder of a licence under this Part for the unexpired portion of the term of the registration, unless sooner revoked, suspended or cancelled under this Part. 1974, c. 47, s. 103.

Complaints  
Committee

**102.**—(1) The Complaints Committee shall be composed of,

- (a) three persons who are members of the Collège;
- (b) two persons who are members of the Council one of whom was appointed to the Council by the Lieutenant Governor in Council.

(2) No person who is a member of the Discipline Committee <sup>Idem</sup> shall be a member of the Complaints Committee.

(3) The Council shall name one member of the Complaints <sup>Chairman</sup> Committee to be chairman.

(4) Three members of the Complaints Committee constitute <sup>Quorum</sup> a quorum. 1974, c. 47, s. 104.

**103.**—(1) The Complaints Committee shall consider and <sup>Duties</sup> investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it <sup>Idem</sup> receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 106; or
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision <sup>Decision and reasons</sup> is made under clause (2) (b), its reasons therefor. 1974, c. 47, s. 105.

**104.**—(1) The Discipline Committee shall be composed of, <sup>Discipline Committee</sup>

- (a) three persons who are members of the College;
- (b) three persons who are members of the Council, two of whom were appointed to the Council by the Lieutenant Governor in Council.

(2) Three or more members of the Discipline Committee, <sup>Quorum and votes</sup> of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and

all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability  
of lay  
member

(3) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Chairman

(4) The Council shall name one member of the Discipline Committee to be chairman.

Reference  
by Council or  
Executive  
Committee

(5) Notwithstanding section 103, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. 1974, c. 47, s. 106.

Duties of  
Discipline  
Committee

**105.**—(1) The Discipline Committee shall,

- (a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under section 103, 104 or 107; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

(3) A member may be found guilty of professional mis-<sup>Professional misconduct</sup>conduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he is in contravention of section 97; or
- (c) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a member to be <sup>Incompetence</sup>incompetent if in its opinion he has displayed in his professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates he is unfit to continue in practice.

(5) Where the Discipline Committee finds a member guilty <sup>Powers of Discipline Committee</sup>of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that <sup>Costs</sup>the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

Stay on  
appeal for  
incompetence

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Stay on  
appeal for  
professional  
misconduct

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Service of  
decision of  
Discipline  
Committee

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member.

Continuation  
on expiry of  
Committee  
membership

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1974, c. 47, s. 107.

Interpre-  
tation

**106.**—(1) In this section,

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference  
to board of  
inquiry

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit

to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his licence be suspended until he complies.

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of the question of his capacity becomes final.

Hearing by  
Registration  
Committee

(5) The College, the person whose capacity is being investigated and any other person specified by the Registration Committee are parties to a proceeding under this section.

Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding.

Medical  
evidence

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Registration Committee shall, after the hearing,

Powers of  
Registration  
Committee

(a) make a finding as to whether or not the member is an incapacitated member; and

(b) where the member is found to be an incapacitated member, by order,

(i) revoke his licence,

(ii) suspend his licence for such period as the Committee considers appropriate, or

(iii) attach such terms and conditions to the licence as the Committee considers appropriate.

Procedures

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, with necessary modifications, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the order. 1974, c. 47, s. 108.

Restoration  
of licence

**107.**—(1) A person whose licence has been revoked or suspended for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension.

Reference to  
Discipline  
Committee

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply with necessary modifications, to proceedings of the Registration Committee and Discipline Committee under this section. 1974, c. 47, s. 109.

Investigation  
of members

**108.**—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of  
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation

is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. R.S.O. 1980,  
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation. Obstruction  
of  
investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night. Search  
warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated. Removal of  
books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents. Admissibility  
of copies

Report of  
Registrar

(7) The registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he considers appropriate. 1974, c. 47, s. 110.

Matters  
confidential

**109.**—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 108 and any member of the Council or a Committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 108 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;

R.S.O. 1980,  
c. 197

(b) as may be required for the enforcement of the *Health Insurance Act*;

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

Testimony  
in civil suit

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. 1974, c. 47, s. 111.

Restraining  
orders

**110.**—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 47, s. 112.

Exemption  
under  
R.S.O. 1980,  
c. 364

**111.**—(1) Nothing in this Part applies to the practice of ophthalmic dispensing by an ophthalmic dispenser registered under the *Ophthalmic Dispensers Act*.

Retail  
merchants

(2) Nothing in this Part prevents,

(a) the sale of protective glasses for industrial purposes, coloured glasses not embodying any ophthalmic lens, goggles or simple magnifying glasses not sold or

devised for the relief or correction of any visual or muscular error or defect of the eye; or

- (b) the sale or offering for sale by a retail merchant at his place of business of spectacles or eyeglasses,

but the Lieutenant Governor in Council may make regulations governing or restricting the sale or offering for sale referred to in clause (b) and prescribing the terms and conditions thereof and designating the nature and kind of spectacles and eyeglasses that may be sold under this subsection. 1974, c. 47, s. 113.

**112.**—(1) Every person who is in contravention of section 96 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 47, s. 114 (1). Penalties

(2) Subject to the provisions of Parts II and III, any person not licensed under this Part who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is licensed or registered under this Part or that he is recognized by law or otherwise as an optometrist or who assumes or employs the title or description "doctor" or "optometrist" or any affix or prefix indicative of such titles or qualifications as an occupational designation relating to the treatment of human ailments or physical defects or advertises or holds himself out as such is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. 1975, c. 63, s. 6. Idem,  
use of  
titles

(3) Any person who obstructs a person appointed to make an investigation under section 108 in the course of his duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. 1974, c. 47, s. 114 (3). Idem

## PART VI

### PHARMACY

**113.**—(1) In this Part,

Interpre-  
tation

(a) "by-laws" means the by-laws made under this Part;

(b) "College" means the Ontario College of Pharmacists;

- (c) "Council" means the Council of the College;
- (d) "drug" means any substance or preparation containing any substance,

(i) manufactured, sold or represented for use in,

1. the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or

2. restoring, correcting or modifying functions in humans, animals or fowl,

(ii) referred to in Schedule C, D, E, F, G or N,

(iii) listed in a publication named by the regulations, or

(iv) named in the regulations,

but does not include,

(v) any substance or preparation referred to in subclause (i), (ii) or (iii) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,

(vi) any proprietary medicine as defined from time to time by the regulations made under the *Food and Drugs Act* (Canada) that does not contain any substance or preparation containing any substance referred to in Schedule C, D, E, F, G or N,

(vii) a substance or preparation named in Schedule A or B;

(e) "interchangeable pharmaceutical product" means a product containing a drug or drugs in the same amounts of the same active ingredients in the same dosage form as that directed by a prescription;

(f) "intern" means a person who is registered under this Part as an intern;

(g) "licence" means a licence to act as a pharmacist issued under this Part;

(h) "member" means a member of the College;

- (i) "Parcost C.D.I." means the Parcost Comparative Drug Index prescribed by the regulations;
- (j) "pharmacist" means a person who is licensed under this Part as a pharmacist;
- (k) "pharmacy" means a premises in or in part of which prescriptions are compounded and dispensed for the public or drugs are sold by retail;
- (l) "prescriber" means a person who is authorized to give a prescription within the scope of his practice of a health discipline or profession;
- (m) "prescription" means a direction from a prescriber directing the dispensing of any drug or mixture of drugs for a designated person or animal;
- (n) "register" means a register maintained by the Registrar under this Part;
- (o) "registered pharmacy student" means a person who is registered under this Part as a pharmacy student;
- (p) "Registrar" means the Registrar of the College;
- (q) "registration" means a registration as an intern or registered pharmacy student and "registered" has a corresponding meaning;
- (r) "regulations" means the regulations made under this Part.

(2) A reference in this Part to Schedules A, B, C, D, E, F, <sup>Schedules</sup> G or N is a reference to such Schedule established by the regulations for the purposes of this Part.

(3) The practice of a pharmacist is a health discipline to <sup>Health discipline</sup> which this Part applies. 1974, c. 47, s. 116.

**114.**—(1) This Part does not apply to,

<sup>Application of Part</sup>

- (a) drugs compounded, dispensed or supplied in and by a hospital or a health or custodial institution approved or licensed under any general or special Act under the authority of a prescriber for persons under health care provided by such hospital or health or custodial institution;

(b) the selling of,

R.S.C. 1970,  
c. P-10

(i) any substance registered under the *Pest Control Products Act* (Canada) and sold in accordance with its provisions,

R.S.C. 1970,  
c. F-7

(ii) any feeding stuffs registered under the *Feeds Act* (Canada) and sold in accordance with its provisions,

R.S.O. 1980,  
c. 248

(iii) a drug by a person licensed under the *Live Stock Medicines Act*;

R.S.O. 1980,  
c. 522

(c) the practice of a veterinarian under the *Veterinarians Act*.

Idem

(2) Nothing in this Part prevents any person from selling or dispensing a drug to a person authorized under this Act to dispense, prescribe or administer drugs. 1974, c. 47, s. 117.

#### THE ONTARIO COLLEGE OF PHARMACISTS

Ontario  
College of  
Pharmacy  
continued

**115.**—(1) The Ontario College of Pharmacists is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

Objects

(2) The objects of the College are,

(a) to regulate the practice of pharmacists and to govern its members in accordance with this Act, the regulations and the by-laws;

(b) to establish, maintain and develop standards of knowledge and skill among its members;

(c) to establish, maintain and develop standards of qualification and practice for the practice of pharmacists;

(d) to establish, maintain and develop standards of professional ethics among its members;

(e) to establish, maintain and develop standards for the operation of pharmacies;

(f) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act,

in order that the public interest may be served and protected. 1974, c. 47, s. 118.

**116.**—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject. <sup>Membership in the College</sup>

(2) A member may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. <sup>Resignation of membership</sup>

(3) The Council may cancel a licence for non-payment of any prescribed fee after the member has been given at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member. 1974, c. 47, s. 119. <sup>Cancellation for default of fees</sup>

**117.**—(1) The Council of the Ontario College of Pharmacy is continued and shall be the governing body and board of directors of the Ontario College of Pharmacists and shall manage and administer its affairs. <sup>Council of the College</sup>

(2) The Council shall be composed of, <sup>Composition of Council</sup>

- (a) not fewer than thirteen and not more than nineteen persons who are members and are elected by the members in the manner provided by the regulations;
- (b) not fewer than four and not more than six persons who are not members of a Council under this Act or registered or licensed under this or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council; and
- (c) the dean of each faculty of pharmacy in Ontario or, in his absence, a representative who is a member of the faculty and of the College appointed by the dean.

(3) The persons appointed under clause (2) (b) shall be paid, out of moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council. <sup>Remuneration of lay members</sup>

(4) The appointment of every person appointed under subsection (2) expires at the first regular meeting of the Council <sup>Expiration of appointment</sup>

following the election of members to Council held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment.

Qualifica-  
tions to  
vote

(5) Every member who is,

(a) resident in Ontario; and

(b) not in default of payment of the annual fee prescribed by the regulations,

is qualified to vote at an election of members of the Council.

President,  
and Vice-  
President

(6) The Council shall elect a President and Vice-President from among its members.

Registrar  
and staff

(7) The Council shall appoint during pleasure a Registrar and may appoint a deputy registrar who shall have the powers of the Registrar for the purposes of this Part, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the College.

Quorum

(8) A majority of the members of the Council constitutes a quorum.

Meetings  
of Council

(9) The Council shall meet at least twice a year. 1974, c. 47, s. 120 (1-9).

Powers of  
Minister

**118.** In addition to his powers and duties under Part 1, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1974, c. 47, s. 121.

Regulations

**119.**—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

(a) fixing the number of members to be elected to the Council and establishing the regional and other representation for elections;

- (b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;
- (c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences and registrations;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) prescribing the qualifications for and conditions of registration of students and interns and governing in-service training for students and interns;
- (g) providing for the maintenance and inspection of registers;
- (h) governing standards of practice for the profession;
- (i) respecting the advertising of professional services;
- (j) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to pharmacies and the practice of pharmacists and providing for the examination and audit of such books and records as the regulations prescribe;
- (k) regulating advertising by members;
- (l) providing for the designation of honorary members of the College and prescribing their rights and privileges;
- (m) prohibiting practice by pharmacists where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (n) defining professional misconduct for the purposes of this Part;
- (o) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;

- (p) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (s) respecting the duties and authority of the Registrar;
- (t) requiring the payment of annual fees by members, students and interns and fees for licensing, registration, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (u) prescribing forms and providing for their use;
- (v) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

Amendment  
of electoral  
divisions

(2) The number of members to be elected to the Council and the electoral divisions and other representation fixed and established under clause (1) (a) shall not be altered or amended more than once in any five year period. 1974, c. 47, s. 122.

By-laws

**120.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a

- vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
  - (g) respecting the calling, holding and conducting of meetings of the membership of the College;
  - (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
  - (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
  - (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
  - (k) providing for a code of ethics;
  - (l) providing for the appointment of inspectors for the purposes of this Part;
  - (m) prescribing forms and providing for their use;
  - (n) providing procedures for the making, amending and revoking of the by-laws;
  - (o) respecting management of the property of the College;
  - (p) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
  - (q) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;

- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;
- (s) authorizing the making of grants for any purpose that may tend to advance scientific knowledge or pharmacy education, or maintain or improve the standards of practice in pharmacy or to support and encourage public information and interest in the past and present role of pharmacy in society;
- (t) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Distribution  
of by-laws

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College. 1974, c. 47, s. 123.

Licence  
to act as  
pharmacist

**121.**—(1) Except as provided in this Part, no person shall act or hold himself out as acting as a pharmacist unless he is licensed under this Part.

Use of  
titles

(2) Any person who, in making or purporting to make a retail sale of a drug or substance in Schedule A or B, uses or associates therewith the title or designation of,

- (a) pharmacist;
- (b) pharmaceutical chemist;
- (c) chemist;
- (d) druggist;
- (e) apothecary,

whether or not in combination with each other or with any other term shall be deemed to be holding himself out as acting as a pharmacist for the purposes of subsection (1).

Conflict  
with other  
health  
discipline

(3) A licence shall be deemed to authorize a member to act as a pharmacist under this Part, notwithstanding that

such action is included in the practice of any other health discipline. 1974, c. 47, s. 124.

**122.**—(1) The Council shall establish and appoint as hereinafter provided the following committees, <sup>Establishment of committees</sup>

- (a) Executive Committee;
- (b) Accreditation Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

(3) Where the persons attending a meeting of any Committee duly called fail to constitute a quorum, the President may appoint such members of the Council as are required to complete the quorum to attend the meeting and act as a member of the Committee for the purposes of the meeting. 1974, c. 47, s. 125.

**123.**—(1) The Executive Committee shall be composed of, <sup>Executive Committee</sup>

- (a) the President, who shall be chairman of the Committee;
- (b) the Vice-President; and
- (c) three members of the Council appointed by the Council, one of whom shall be the immediate past president, if he is a member of Council, and one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Committee constitutes a quorum.

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the <sup>Duties</sup>

Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law. 1974, c. 47, s. 126.

Registration  
Committee

**124.**—(1) The Registration Committee shall be composed of,

- (a) one member of the Council who is the dean of a faculty of pharmacy, or his representative on the Council;
- (b) two members of the Council who were elected to the Council; and
- (c) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Chairman

(2) The Council shall name one member of the Registration Committee to be chairman.

Quorum

(3) A majority of the members of the Registration Committee constitutes a quorum. 1974, c. 47, s. 127.

Licences  
and regis-  
trations

**125.**—(1) The Registrar shall issue a licence or registration to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence or registration that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Powers and  
duties of  
Registration  
Committee

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and registrations and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and
- (b) may exempt an applicant from any admission requirement.

Conditions  
of licences

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or make or refuse to make registrations or to issue licences and make registrations subject to such terms, conditions and limitations as the Committee specifies.

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies. Review of qualifications

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed or registered under this Part, identifying the terms, conditions and limitations attached to the licence or registration, and shall note on the register every revocation, suspension and cancellation or termination of a licence or registration and such other information as the Registration Committee or Discipline Committee directs. Registers of licences

(6) Every licence and registration issued or made under *The Pharmacy Act*, being chapter 348 of the Revised Statutes of Ontario, 1970, and in effect immediately before the 14th day of July, 1975 continues in the same manner as if issued or made under this Part. 1974, c. 47, s. 128. Continuation of licences R.S.O. 1970, c. 348

**126.**—(1) The Accreditation Committee shall be composed of, Accreditation Committee

(a) three members of the Council who were elected to the Council; and

(b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council,

and shall exercise the powers and carry out the duties assigned to it under sections 135 and 136.

(2) No person who is a member of the Discipline Committee shall be a member of the Accreditation Committee. Idem

(3) The Council shall name one member of the Accreditation Committee to be chairman. Chairman

(4) A majority of the members of the Accreditation Committee constitutes a quorum. 1974, c. 47, s. 129. Quorum

**127.**—(1) The Complaints Committee shall be composed of, Complaints Committee

(a) three members of the Council who were elected to the Council; and

- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Idem

- (2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

- (3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

- (4) A majority of the members of the Complaints Committee constitutes a quorum. 1974, c. 47, s. 130.

Duties

**128.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

- (2) The Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 131; or
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

Decision  
and  
reasons

- (3) The Committee shall give its decision in writing to the Registrar for the purposes of section 8 and, where the decision is made under clause (2) (b), its reasons therefor. 1974, c. 47, s. 131.

Discipline  
Committee

**129.**—(1) The Discipline Committee shall be composed of,

- (a) four members of the Council who were elected to the Council; and

- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

(2) Three or more members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Quorum  
and votes

(3) Where the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Disability  
of lay  
member

(4) The Council shall name one member of the Discipline Committee to be chairman.

Chairman

(5) Notwithstanding section 128, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member. 1974, c. 47, s. 132.

Reference  
by Council  
or Executive  
Committee

**130.**—(1) The Discipline Committee shall,

Duties of  
Discipline  
Committee

(a) when so directed by the Council, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;

(b) hear and determine matters referred to it under section 128, 129, 132 or 136; and

(c) perform such other duties as are assigned to it by the Council.

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

Idem

(a) consider the allegations, hear the evidence and ascertain the facts of the case;

(b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;

(c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;

(d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional  
misconduct

(3) A member may be found guilty of professional misconduct by the Committee if,

- (a) he has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction;
- (b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incom-  
petence

(4) The Discipline Committee may find a member to be incompetent if in its opinion he has displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public he serves of a nature or to an extent that demonstrates he is unfit to carry out the responsibilities of a pharmacist.

Powers of  
Discipline  
Committee

(5) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period not exceeding twelve months;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;
- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

## Costs

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his costs or such portion thereof as the Discipline Committee fixes.

(7) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision. Stay on appeal for incompetence

(8) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned. Stay on appeal for professional misconduct

(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. Service of decision of Discipline Committee

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1974, c. 47, s. 133. Continuation on expiry of Committee membership

**131.—(1)** In this section,

Interpretation

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise as a pharmacist or that his practice be restricted.

(2) Where the Registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter. Reference to board of inquiry

Examination (3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the Executive Committee on the recommendation of the board may order that his licence be suspended until he complies.

Hearing by  
Registration  
Committee (4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and the Executive Committee may, on the recommendation of the Registration Committee, suspend the member's licence until the determination of the question of his capacity becomes final.

Parties (5) The College, the person whose capacity is being investigated and any other person specified by the Committee are parties to a proceeding under this section.

Medical  
evidence (6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding,

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of  
Registration  
Committee

(7) The Registration Committee shall, after the hearing,

(a) make a finding as to whether or not the member is an incapacitated member; and

(b) where the member is found to be an incapacitated member, by order,

- (i) revoke his licence,
- (ii) suspend his licence for such period as the Committee considers appropriate, or
- (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The Registrar may give notice of an order made under this section to such persons as he considers appropriate in the public interest. Notice of orders

(9) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply, with necessary modifications, to proceedings of the Registration Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision. 1974, c. 47, s. 134. Procedures

**132.**—(1) A person whose licence has been revoked for cause under this Part, or registration has been suspended or cancelled for cause under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or cancellation or, where the suspension is for more than one year, one year after the suspension. Restoration of licence

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Registration Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the former member. Reference to Discipline Committee

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply, with necessary modifications, to proceedings of the Registration Committee and Discipline Committee under this section. Procedures

(4) Notwithstanding subsections (1), (2) and (3), the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously Direction by Council to issue licence

been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate. 1974, c. 47, s. 135.

Investigation of members

**133.**—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the Registrar.

Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,  
c. 411

Obstruction of investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search warrant

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated. <sup>Removal of books, etc.</sup>

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents. <sup>Admissibility of copies</sup>

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or such other committee as he considers appropriate. 1974, c. 47, s. 136. <sup>Report of Registrar</sup>

**134.**—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 133, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except, <sup>Matters confidential</sup>

(a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations;

(b) as may be required for the enforcement of the *Health Insurance Act*; <sup>R.S.O. 1980, c. 197</sup>

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws. 1974, c. 47, s. 137. <sup>Testimony in civil suit</sup>

## PHARMACIES

Certificates of accreditation

**135.**—(1) No person shall establish or operate a pharmacy unless a certificate of accreditation has been issued in respect thereof.

Issuance

(2) The Registrar shall issue a certificate of accreditation and renewals thereof to any applicant therefor where the applicant and the pharmacy and its proposed operation qualify under this Part and the regulations and shall refer to the Accreditation Committee every application for a certificate or renewal that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

Accreditation Committee

(3) The Accreditation Committee shall determine the eligibility of the applicant and the pharmacy or proposed pharmacy and its operation and may direct the Registrar to issue or refuse to issue the accreditation certificate or to issue the accreditation certificate subject to such terms, conditions or limitations as the Committee directs.

Procedures

(4) The provisions of Part I applying to hearings, review and appeals in respect of proceedings of the Registration Committee apply, with necessary modifications, in respect of proceedings of the Accreditation Committee.

Revocation of certificate of accreditation

**136.**—(1) Where the Accreditation Committee has reason to believe that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Committee may refer the matter to the Discipline Committee for a hearing and determination.

Powers of Discipline Committee

(2) Where the Accreditation Committee refers a matter to the Discipline Committee and the Discipline Committee finds that a pharmacy or its operation fails to conform to the requirements of this Part and the regulations or to any term, condition or limitation to which its certificate of accreditation is subject, the Discipline Committee may,

- (a) suspend the certificate of accreditation for a stated period; or
- (b) revoke the certificate of accreditation.

Procedures

(3) The provisions of Part I and this Part applying to proceedings before the Discipline Committee in respect of professional misconduct and appeals therefrom apply to the proceedings before the Discipline Committee under this section.

Cancellation for non-payment of fee

(4) The Council may cancel a certificate of accreditation for non-payment of the prescribed fee after the person operating

the pharmacy has been given at least two months notice of default and intention to cancel. 1974, c. 47, s. 139.

**137.** Every person who permanently closes a pharmacy <sup>Closing of pharmacy</sup> shall immediately remove all signs and symbols relating to the practice of pharmacy either within or outside the premises, shall remove and dispose of all drugs according to law and shall submit in writing to the Registrar such information and within such time as the regulations prescribe. 1974, c. 47, s. 140.

**138.—**(1) No corporation shall own or operate a pharmacy <sup>Operation of pharmacies by corporation</sup> unless the majority of the directors of the corporation are pharmacists.

(2) No corporation shall own or operate a pharmacy unless <sup>Idem</sup> a majority of each class of shares of the corporation is owned by and registered in the name of pharmacists.

(3) For the purposes of subsection (2), shares registered in the name of the personal representative of a deceased pharmacist shall, for a period not exceeding four years, be considered to be registered in the name of a pharmacist. <sup>Application of subs. (2)</sup>

(4) Subsection (2) does not apply to any corporation operating a pharmacy on the 14th day of May, 1954. <sup>Idem</sup>

(5) This section does not apply to the operation of a pharmacy by a non-profit corporation having as its objects and providing health services by members of more than one health discipline. 1974, c. 147, s. 141. <sup>Application of section</sup>

**139.** No person whose licence as a pharmacist has been <sup>Where licence revoked</sup> revoked for cause or while his licence is suspended for cause,

(a) shall be employed or work in a pharmacy; or

(b) shall act as a director or vote as a shareholder in a corporation operating a pharmacy. 1974, c. 47, s. 142.

**140.—**(1) No person other than a pharmacist or a corporation complying with the requirements of section 138 shall own <sup>Ownership of pharmacies</sup> or operate a pharmacy.

(2) For the purposes of the ownership of a pharmacy, or <sup>Idem</sup> for the purposes of the composition of the board of directors or ownership of shares of a corporation as required by section 138, the right to operate the pharmacy shall not be affected by,

(a) any suspension of the licence of a pharmacist; or

- (b) the revocation of the licence of a pharmacist until after a period of six months has elapsed. 1974, c. 47, s. 143.

Carrying on  
business of  
bankrupt  
person

**141.**—(1) Where a person owning and operating a pharmacy becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, he shall so notify the Registrar and the trustee in bankruptcy, liquidator or assignee, as the case may be, may own and operate the pharmacy for the purposes of the bankruptcy, insolvency or assignment.

Carrying on  
business of  
deceased  
person

(2) Upon the death of a pharmacist who was owning and operating a pharmacy at the time of his death, the personal representative of such deceased person may own and operate the pharmacy for a period of four years or for such further period as the Council may authorize.

Notification  
to Registrar

(3) Every person authorized to own and operate a pharmacy under subsection (1) or (2) shall immediately upon becoming so authorized file with the Registrar evidence of his authority. 1974, c. 47, s. 144.

Supervision  
of pharmacist

**142.**—(1) No person shall operate a pharmacy unless,

- (a) it is under the supervision of a pharmacist who is physically present; and
- (b) it is managed by a pharmacist so designated by the owner of the pharmacy.

Exception

(2) Where the drugs in a pharmacy are restricted to a part of the pharmacy that is not accessible to the public in accordance with the regulations, and while such part is not in operation, clause (1) (a) does not apply to the remaining premises of the pharmacy.

Displaying  
licence

(3) Every pharmacist practising in a pharmacy shall publicly display his licence in the pharmacy except during such period, if any, as the licence is under suspension. 1974, c. 47, s. 145.

Designations

**143.** No person shall in connection with a retail business use the designation,

- (a) drug store;
- (b) pharmacy;
- (c) drug department;
- (d) drug sundries;
- (e) drug or drugs;
- (f) drug mart; or

(g) medicines,

unless the business is an accredited pharmacy. 1974, c. 47, s. 146.

**144.**—(1) An inspector appointed under a by-law may enter <sup>Inspection of premises</sup> any pharmacy or other shop in the performance of his duties under this Part at all reasonable times.

(2) Any record required to be kept under this Part shall <sup>Inspection of records</sup> be open to inspection by any inspector appointed under a by-law. 1974, c. 47, s. 147.

## DRUGS

**145.**—(1) Subject to section 150, no person other than a <sup>Dispensing of drugs</sup> pharmacist or an intern or a registered pharmacy student acting under the supervision of a pharmacist who is physically present shall compound, dispense or sell any drug in a pharmacy.

(2) Where a pharmacist or an intern is present in the <sup>Exception for certain drugs</sup> pharmacy and is available to the purchaser for consultation, subsection (1) does not apply to the sale in a pharmacy of a drug other than,

(a) a drug requiring a prescription for sale;

(b) a drug referred to in Part I of Schedule D; or

(c) a drug referred to in Schedule C. 1974, c. 47, s. 148.

**146.** No person shall knowingly sell any drug under the <sup>Misrepresentation</sup> representation or pretence that it is a particular drug that it is not, or contains any substance that it does not. 1974, c. 47, s. 149.

**147.**—(1) No person shall sell a drug listed in Schedule D <sup>Labelling of Sched. D drugs</sup> unless it is labelled in accordance with the regulations.

(2) No person shall sell by retail a drug listed in Part I <sup>Record of poisons</sup> of Schedule D unless a record of the sale is made in such manner as the regulations prescribe.

(3) Subsections (1) and (2) do not apply to a drug when <sup>Exception</sup> it is dispensed pursuant to a prescription or forms part of the ingredients of a prescription. 1974, c. 47, s. 150.

**148.** Drugs referred to in Schedules D, E, F, G and N <sup>Mailing of drugs</sup> shall be sent through the mail only by registered mail. 1974, c. 47, s. 151.

Records  
of pharmacy

**149.** The manager of every pharmacy shall keep or cause to be kept a record of every purchase and sale of a drug referred to in Schedule G or N in such form or manner as the regulations may prescribe. 1974, c. 47, s. 152.

Sale of  
Sched. B  
drugs

**150.**—(1) No person shall sell by retail a substance listed in Schedule B unless it is labelled in accordance with the regulations.

Idem

(2) No person other than a pharmacist shall sell by retail a substance listed in Schedule B for the prevention or treatment of an ailment, disease or physical disorder, unless it is sold in the container in which it was received by the seller. 1974, c. 47, s. 153.

Prescription  
drugs

**151.**—(1) Subject to the regulations, no person shall sell by retail any drug referred to in Schedule E, F, G or N, except on prescription given in such form, in such manner and under such conditions as the regulations prescribe.

Exception

(2) Subsection (1) does not apply to drugs referred to in Part II of Schedule F that are sold in a container labelled by the manufacturer as for veterinary or agricultural use or sold in a form unsuitable for human use. 1974, c. 47, s. 154.

Information  
noted on  
prescription

**152.**—(1) Every person who dispenses a drug pursuant to a prescription shall ensure that the following information is recorded on the prescription,

- (a) the name and address of the person for whom the drug is prescribed;
- (b) the name, strength (where applicable) and quantity of the prescribed drug;
- (c) the directions for use, as prescribed;
- (d) the name and address of the prescriber;
- (e) the identity of the manufacturer of the drug dispensed;
- (f) an identification number or other designation;
- (g) the signature of the person dispensing the drug and, where different, also the signature of the person receiving a verbal prescription;
- (h) the date on which the drug is dispensed;
- (i) the price charged.

(2) The records required under subsection (1) shall be <sup>Retention of records</sup> retained for not less than six years.

(3) The container in which the drug is dispensed shall <sup>Identification markings</sup> be marked with,

- (a) the identification number that is on the prescription;
- (b) the name, address and telephone number of the pharmacy in which the prescription is dispensed;
- (c) the identification of the drug as to its name, its strength and its manufacturer, unless directed otherwise by the prescriber;
- (d) the quantity where the drug dispensed is in solid oral dosage form;
- (e) the name of the owner of the pharmacy;
- (f) the date the prescription is dispensed;
- (g) the name of the prescriber;
- (h) the name of the person for whom it is prescribed;
- (i) the directions for use as prescribed. 1974, c. 47, s. 155.

**153.**—(1) Every person in respect of whom a prescription is <sup>Copy of prescription</sup> presented to a pharmacist to be dispensed, unless otherwise directed by the prescriber, is entitled to have a copy of it marked as such, furnished to him, his agent, or a pharmacist acting on behalf of such person or agent.

(2) Prescriptions in a pharmacy that ceases to operate as a <sup>Disposal of prescriptions</sup> pharmacy shall be delivered to the persons, or agents of the persons, who presented the prescription or to another pharmacy that is reasonably readily available to such person or his agent, or failing either, to the College. 1974, c. 47, s. 156.

**154.** A pharmacist may dispense a drug pursuant to a <sup>Prescription by doctor out of Ontario</sup> written order signed by a physician or dentist licensed to practise in a province in Canada other than Ontario, if in the professional judgment of the pharmacist the patient requires the drug immediately, but such order shall not be refilled. 1974, c. 47, s. 157.

**155.**—(1) Every person who dispenses a prescription may, <sup>Substitution of inter-changeable product</sup> unless otherwise directed by the prescriber, select and dispense

an interchangeable pharmaceutical product other than the one prescribed, if the interchangeable pharmaceutical product dispensed is listed as interchangeable in the Parcost C.D.I., and is lower in cost than the drug prescribed.

Generic  
description

(2) Where a drug prescribed is listed in the Parcost C.D.I. and the identity of the manufacturer is not specified by the prescriber every person who dispenses a prescription shall select and dispense an interchangeable pharmaceutical product listed in the Parcost C.D.I.

Cost

(3) No person shall knowingly supply an interchangeable product under subsection (1) or (2) at a price in excess of the cost of the lowest priced interchangeable pharmaceutical product in his inventory and the maximum dispensing fee as set out in the Parcost C.D.I.

No liability  
for sub-  
stitution

(4) No action or other proceeding lies or shall be instituted against a prescriber or pharmacist on the grounds that an interchangeable pharmaceutical product other than the one prescribed was dispensed in accordance with this section. 1974, c. 47, s. 158.

Reports by  
pharmacists

**156.**—(1) Every person who operates or manages a pharmacy shall provide the Minister with such information from records required to be kept under section 152 as the Minister requests.

Reports by  
Registrar

(2) The Registrar shall provide the Minister with such information respecting substances referred to in the Schedules, except Schedule A, as the Registrar possesses and the Minister requests. 1974, c. 47, s. 159.

Sale of  
drugs by  
wholesale

**157.**—(1) No person shall sell by wholesale any drug for the purpose of sale by retail to any person who is not entitled to sell the drug by retail.

Registration  
by whole-  
salers

(2) Every person supplying drugs by wholesale in Ontario shall register with the College as a drug wholesaler and furnish the Registrar with a signed statement showing,

(a) his full name and address, or if a corporation the name of the corporation, the names and addresses of the president and directors thereof;

(b) the principal business address,

and with respect to his places of business where drugs are handled,

(c) the address of each place of business, agent or representative in Ontario;

- (d) the name of the manager or person responsible for each place of business in Ontario;
- (e) the date on which he proposes to commence business at each new location in Ontario. 1974, c. 47, s. 160 (1, 2).

(3) The information required by subsection (2) shall be furnished at least seven days before commencing business and any change in the information required by subsection (2) shall be furnished to the Registrar within seven days of the change. 1974, c. 47, s. 160 (3), *revised*.

**158.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Council may make regulations,

- (a) prescribing the substances that are included in Schedules A, B, C, D, E, F, G and N for the purpose of this Part;
- (b) naming substances for the purposes of clause 113 (1) (d) and specifying the provisions of this Part that shall apply in respect of such substances;
- (c) naming publications for the purposes of clause 113 (1) (d);
- (d) prescribing the percentage of any substance to be contained in any preparation referred to in any Schedule;
- (e) prescribing the manner in which prescriptions shall be given in respect of the drugs referred to in Schedules E, F, G and N and the conditions under which such prescriptions may be given;
- (f) authorizing the refilling of prescriptions without further prescription and prescribing the conditions under which prescriptions may be refilled without further prescription;
- (g) prescribing the manner in which records shall be kept of the purchase and sale of the drugs referred to in Schedules D, G and N;
- (h) pertaining to the transfer of prescriptions and the records to be kept by the transferor and the transferee;
- (i) designating substances listed in Schedule D that may be sold by persons not otherwise authorized under this Part and authorizing the sale of such sub-

stances by any persons or classes of persons not otherwise authorized under this Part and prescribing the conditions under which such substances shall be sold by such persons or classes of persons;

- (j) prescribing the labelling of substances listed in Schedule B for the purposes of section 150;
- (k) providing for the establishment and maintenance of patient record systems;
- (l) prescribing the types of containers to be used for containing any drug and the designs, specifications and labelling of containers used for containing any drug;
- (m) prescribing standards for accreditation of pharmacies including their operation and the maintenance, space, equipment and facilities required therefor;
- (n) providing for applications for certificates of accreditation of pharmacies, and the issuance of such certificates and their expiration and renewal and requiring the payment of fees therefor and prescribing the amounts thereof;
- (o) providing for the filing with the Registrar of information respecting the location of the place of practice and the residential address of pharmacists, the name and address of pharmacies in the Province of Ontario including the name and address of the owner and the manager of such pharmacies, and any changes therein, and the form of such information and the time of filing;
- (p) providing for the information, instruments or documents to be filed with the Registrar by persons opening, acquiring, relocating or closing a pharmacy, the form thereof and the time of filing;
- (q) prescribing standards for the subdivision of premises so that drugs are restricted to a specified area and so that the part of the premises to which the drugs are restricted may be rendered not accessible to the public, while the other part remains open;
- (r) regulating the handling, location and storage of drugs in a pharmacy.

Idem

(2) The Lieutenant Governor in Council may make regulations,

- (a) regulating the use of containers in which drugs may be dispensed and designating organizations to test, certify and designate containers that meet standards approved by the Minister for such purposes as may be specified in the regulations, and requiring the use of containers that are so certified and designated except under such circumstances as are prescribed;
- (b) prescribing the Parcost C.D.I. for the purpose of this Part. 1974, c. 47, s. 161.

#### ENFORCEMENT

**159.**—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1974, c. 47, s. 162. Appeal

**160.** A person who sells any drug in contravention of this Part or the regulations is not entitled to recover any charges in respect thereof. 1974, c. 47, s. 163. Recovery of charges

**161.** Where a licence or certificate of accreditation is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate to the Registrar. 1974, c. 47, s. 164. Surrender of cancelled licence or accreditation certificate

**162.**—(1) Every person who is in contravention of section 121 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. Penalties

(2) Every person who not being a member uses an occupational designation prescribed by the regulations to be used by members or a like designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000. Idem

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided Idem

is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. 1974, c. 47, s. 165.

Responsi-  
bility of  
owner and  
manager

**163.**—(1) Every owner or manager of a pharmacy is liable for every offence against this Part committed by any person in his employ or under his supervision with his permission, consent or approval, express or implied, and every director of a corporation operating a pharmacy is liable for every offence against this Part committed by any person in the employ of the corporation with his permission, consent or approval, express or implied.

Idem

(2) Where any person operates a pharmacy contrary to this Part or the regulations, the owner and manager of such pharmacy, or either of them, or any director of a corporation operating a pharmacy, may be proceeded against, and prosecution or conviction of either of them is not a bar to prosecution or conviction of the other. 1974, c. 47, s. 166.

Evidence

**164.** In any prosecution under this Part,

- (a) a certificate as to the analysis of any drug or poison purporting to be signed by a Food and Drug Analyst or Provincial Analyst is admissible in evidence as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the analyst;
- (b) any article labelled as containing any drug is admissible in evidence as *prima facie* proof that the article contains the drug described on the label;
- (c) the label of the container of a drug dispensed pursuant to a prescription is admissible in evidence as *prima facie* proof that the drug named in the prescription was dispensed;
- (d) evidence that a drug is found in a shop or place in which business is transacted is admissible as *prima facie* proof that it was kept for sale;
- (e) evidence of the publishing of a sign, title or advertisement containing the name of an establishment or the owner thereof is admissible in evidence as *prima facie* proof that the sign, title or advertisement was published by the owner of the establishment. 1974, c. 47, s. 167.

## CHAPTER 197

## Health Insurance Act

## 1. In this Act,

Interpre-  
tation

- (a) "Appeal Board" means the Health Services Appeal Board under this Act;
- (b) "dependant" means a dependant of an insured person, as defined in the regulations;
- (c) "Deputy Minister" means the Deputy Minister of Health;
- (d) "future cost of insured services" means the estimated total cost of the future insured services made necessary as the result of an injury that will probably be required by a patient after the date of settlement or, where there is no settlement, the first day of trial;
- (e) "General Manager" means the General Manager appointed under section 4;
- (f) "health facility" means extended care units in a nursing home, ambulance services, medical laboratories and such other health facilities as are prescribed by the regulations;
- (g) "insured person" means a person who is entitled to insured services under this Act and the regulations;
- (h) "insured services" means such services of hospitals and health facilities as are prescribed by the regulations, all services rendered by physicians that are medically necessary and such other health care services as are rendered by such practitioners and under such conditions and limitations as are prescribed by the regulations, but not including the services that a person is entitled to under the *Workmen's Compensation Act*, the *Homes for Special Care Act* or under any Act of the Parliament of Canada except the *Hospital Insurance and Diagnostic Services Act* (Canada) and the *Medical Care Act* (Canada);
- (i) "Minister" means the Minister of Health;

R.S.O. 1980,  
cc. 539, 202R.S.C. 1970,  
cc. H-8, M-8

- (j) "past cost of insured services" means the total cost of the insured services made necessary as the result of an injury and provided to a patient up to and including the date of settlement or, where there is no settlement, the first day of trial;
- (k) "physician" means a legally qualified medical practitioner lawfully entitled to practise medicine in the place where medical services are rendered by him;
- (l) "Plan" means the Ontario Health Insurance Plan referred to in section 10;
- (m) "practitioner" means a person other than a physician who is lawfully entitled to render insured services in the place where they are rendered;
- (n) "regulations" means the regulations made under this Act;
- (o) "resident" means a person who is legally entitled to remain in Canada and who makes his home and is ordinarily present in Ontario, but does not include a tourist, a transient or a visitor to Ontario, and the verb has a corresponding meaning. 1972, c. 91, s. 1; 1975, c. 52, s. 1.

## ADMINISTRATION

Provincial  
authority  
for purposes  
of R.S.C. 1970,  
c. M-8

2.—(1) The Minister is responsible in respect of the administration and operation of the Plan and is the provincial authority for Ontario for the purposes of the *Medical Care Act* (Canada).

Duties of  
Minister

- (2) The Minister may,
  - (a) enter into arrangements for the payment of remuneration to physicians and practitioners rendering insured services to insured persons on a basis other than fee for service;
  - (b) enter into agreements with persons, organizations and government agencies outside Ontario for the provision of insured services to insured persons;
  - (c) limit the hospital and health care services outside Canada for which payment may be made under the Plan;
  - (d) establish one or more advisory committees to advise or assist in the operation of the Plan;

- (e) authorize surveys and research programs and obtain statistics for purposes related to the Plan. 1972, c. 91, s. 2.

**3.—**(1) The Government of Ontario, represented by the Treasurer of Ontario, may enter into and amend from time to time an agreement with the Government of Canada under which Canada will contribute to the cost of that part of the Plan related to the provision of any insured services in or by hospitals and health facilities in accordance with such terms and conditions as the agreement provides. <sup>Ontario-Canada agreement</sup>

(2) The Government of Ontario, represented by the Minister, <sup>Idem</sup> may enter into and amend from time to time an agreement with the Government of Canada under which Canada will contribute to the cost of that part of the Plan related to insured services other than insured services provided in or by a hospital or health facility, in accordance with such terms and conditions as the agreement provides. 1972, c. 91, s. 3.

**4.—**(1) A General Manager for the Plan shall be appointed by the Lieutenant Governor in Council. <sup>General Manager</sup>

(2) Subject to this Act and the regulations, it is the function of the General Manager and he has the power, <sup>Duties</sup>

- (a) to administer the Plan as the chief executive officer of the Plan;
- (b) to carry out enrolments in the Plan including the determination of eligibility and collection of premiums;
- (c) to make payments by the Plan for insured services, including the determination of eligibility and amounts;
- (d) to establish and maintain branch offices for the administration of the Plan;
- (e) to conduct actions and negotiate settlements on behalf of the Plan under the subrogation of the Plan under this Act to the rights of insured persons;
- (f) to require any information required or permitted to be provided to him under this Act or the regulations to be provided in such form as he specifies;
- (g) to perform such other function and discharge such other duties as are assigned to him by this Act and the regulations or by the Minister. 1972, c. 91, s. 4.

## MEDICAL REVIEW COMMITTEE

Medical  
Review  
Committee

**5.—(1)** The Medical Review Committee is continued as a committee of the College of Physicians and Surgeons consisting of,

(a) not more than six members appointed by the Minister from among the persons nominated for such purpose by the College of Physicians and Surgeons; and

(b) two members who are not physicians or practitioners, appointed by the Minister.

Quorum

(2) Three members of the Medical Review Committee, one of whom shall be a member who is not a physician or practitioner, constitute a quorum of the Committee. 1974, c. 60, s. 1 (1).

Remunera-  
tion

(3) The members of the Medical Review Committee shall be paid such remuneration for their services, on an hourly basis, a daily basis or otherwise, as the Lieutenant Governor in Council determines. 1972, c. 91, s. 5 (2).

Administra-  
tion expenses

(4) The Medical Review Committee shall be paid such amounts for the administration expenses of the Committee and the engaging of assistance for the Committee as may be approved by the Minister. 1974, c. 60, s. 1 (2).

Qualifications  
of members

(5) No member of the Medical Review Committee shall be employed in the service of Ontario or any agency of the Crown.

Duties

(6) The Medical Review Committee shall make recommendations to the General Manager on any matter referred to it under section 24 and shall make reports and recommendations respecting any matter referred to it by this Act or the regulations or by the Minister, the Appeal Board or the College of Physicians and Surgeons and shall perform such other duties as are assigned to it by this Act or the regulations. 1972, c. 91, s. 5 (3, 4).

## PRACTITIONER REVIEW COMMITTEES

Practitioner  
review  
committees

**6.—(1)** The Minister shall appoint the following practitioner review committees:

1. A Chiropody Review Committee composed of two members who are not physicians or practitioners and three members from among the persons nomi-

nated by the Board of Regents appointed under the *Chiropody Act*.

R.S.O. 1980,  
c. 72

2. A Chiropractic Review Committee composed of two members who are not physicians or practitioners and three members from among the persons nominated by the Board of Directors of Chiropractic appointed under the *Drugless Practitioners Act*.

R.S.O. 1980,  
c. 127

3. A Dentistry Review Committee composed of two members who are not physicians or practitioners and three members from among the persons nominated by The Royal College of Dental Surgeons of Ontario.
4. An Optometry Review Committee composed of two members who are not physicians or practitioners and three members from among the persons nominated by the College of Optometrists of Ontario.
5. An Osteopathy Review Committee composed of two members who are not physicians or practitioners and three members from among the persons nominated by the Board of Directors of Osteopathy appointed under the *Drugless Practitioners Act*, 1974, c. 60, s. 2, *part*.

(2) Every practitioner review committee is a committee of the board or college that nominates persons appointed as members of the committee. 1975, c. 52, s. 2 (1).

Committee  
of board  
or college

(3) Three members of a practitioner review committee, one of whom shall be a member who is not a physician or practitioner, constitute a quorum of the committee.

Quorum

(4) The members of a practitioner review committee shall be paid such remuneration for their services, on an hourly basis, a daily basis or otherwise, as the Lieutenant Governor in Council determines.

Remunera-  
tion

(5) Every practitioner review committee shall be paid such amounts for the expenses of the committee and the engaging of assistance for the committee as may be approved by the Minister.

Administra-  
tion expenses

(6) No member of a practitioner review committee shall be employed in the public service of Ontario or by any agency of the Crown. 1974, c. 60, s. 2, *part*.

Qualifica-  
tions of  
members

(7) Every practitioner review committee shall make recommendations to the General Manager on any matter referred to it under section 24 and shall make reports and recommendations respecting any matter referred to it by this Act or the regulations or by the Minister, the Appeal Board

Duties

or the board or college of which it is a committee, and shall perform such other duties as are assigned to it by this Act or the regulations. 1974, c. 60, s. 2, *part*; 1975, c. 52, s. 2 (2).

#### MEDICAL ELIGIBILITY COMMITTEE

Medical  
Eligibility  
Committee

7.—(1) The Minister may appoint in writing such number of physicians as he considers appropriate, from time to time, not to exceed fifteen, to form the Medical Eligibility Committee.

Term of  
office

(2) The Minister shall specify the term of office for each physician in his written appointment.

Quorum

(3) Any three members constitute a quorum and are sufficient for the exercise of all functions of the Committee.

Divisions of  
Committee

(4) The Medical Eligibility Committee may sit in several divisions simultaneously providing a quorum of the Committee is present in each division.

Decision of  
Committee

(5) The decision of the majority of the members of the Medical Eligibility Committee present and constituting a quorum is the decision of the Committee.

Qualifications  
of members

(6) No member of the Medical Eligibility Committee shall be employed in the service of Ontario or any agency of the Crown.

Committee  
chairman

(7) The Minister shall, from time to time, designate one of the physicians to be the chairman of the Committee who shall assign the members to sit on the various divisions of the Committee and prescribe the duties to be performed by each division.

Remunera-  
tion

(8) The members of the Medical Eligibility Committee shall be paid such remuneration for their services, on an hourly basis, a daily basis or otherwise, as the Lieutenant Governor in Council determines.

Duties

(9) The Medical Eligibility Committee shall look into and report with its recommendations to the General Manager on any matter referred to it under section 25 and shall perform such other duties as are assigned to it by this Act or the regulations or by the Minister. 1972, c. 91, s. 6.

#### HEALTH SERVICES APPEAL BOARD

Health  
Services  
Appeal Board

8.—(1) The Health Services Appeal Board is continued and shall be composed of not fewer than five and not more than nine members, of whom not more than three shall be physicians, who shall be appointed by the Lieutenant Governor in Council.

(2) One member of the Appeal Board shall be designated as Appeal Board chairman and another member of the Board shall be designated as vice-chairman by the Lieutenant Governor in Council. Appeal Board chairman and vice-chairman

(3) Three members of the Appeal Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Appeal Board. Quorum

(4) The decision of the majority of the members of the Appeal Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the Appeal Board chairman or vice-chairman governs. Decision of Board

(5) No member of the Appeal Board shall be employed in the service of Ontario or any agency of the Crown. Qualifications of members

(6) The members of the Appeal Board shall be paid such remuneration for their services as the Lieutenant Governor in Council determines. Remuneration

(7) The functions of the Appeal Board are, Duties

(a) to hear and determine appeals from decisions made by the General Manager under section 26; and

(b) to perform any other duties assigned by this Act or the regulations or by the Minister,

subject to and in accordance with this Act and the regulations. 1972, c. 91, s. 7, *revised*.

9. The Minister shall make a report annually to the Lieutenant Governor in Council upon the affairs of the Plan and the Minister shall lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 91, s. 8. Report to Assembly

#### ONTARIO HEALTH INSURANCE PLAN

10. The Ontario Health Insurance Plan is continued for the purpose of providing for insurance against the costs of insured services on a non-profit basis on uniform terms and conditions available to all residents of Ontario, in accordance with this Act, and providing other health benefits related thereto. 1972, c. 91, s. 9, *revised*. Ontario Health Insurance Plan continued

Right to  
insurance

**11.**—(1) Every person who is a resident of Ontario is entitled to become an insured person upon application therefor to the General Manager in accordance with this Act and the regulations.

## Dependants

(2) Every dependant of an insured person is an insured person. 1972, c. 91, s. 10 (1, 2).

Entitlement  
to insured  
services

**12.** Every insured person is entitled to payment to himself or on his behalf for, or to be otherwise provided with, insured services in the amounts and subject to such conditions and co-payments, if any, as are prescribed during the period in respect of which his premium is paid or dispensed with under this Act. 1972, c. 91, s. 11.

## Premium

**13.** The premium for insured services shall be such amount as is prescribed by the regulations, payable three months in advance of the period in respect of which the premium is paid and remitted to the General Manager payable to the Treasurer of Ontario. 1972, c. 91, s. 12.

Exemption  
from  
premium for  
persons over  
65

**14.**—(1) Any person who is sixty-five years of age or over and who applies and is eligible therefor, and his spouse and dependants, are entitled to be insured persons without payment of a premium.

## Idem

(2) Subsection (1) does not apply to a person unless he has been ordinarily resident in Ontario for the previous twelve months. 1972, c. 91, s. 13.

Premium  
relief or  
assistance

**15.**—(1) Subject to section 26, the General Manager may grant relief from or assistance in the payment of premiums for such residents and in such amounts based upon the taxable income or estimated taxable income of the resident and his spouse, if any, or upon such other circumstances as are determined in accordance with the regulations. 1972, c. 91, s. 14 (1).

Application  
for  
temporary  
assistance

(2) A resident who is unable to make payment of his premiums due to unemployment, illness, disability or financial hardship may apply to the General Manager for assistance in establishing or continuing his entitlement to insured services and, subject to section 26, the General Manager may direct that the applicant be relieved of the payment of the whole or any part of his premium during his unemployment, illness, disability or financial hardship. 1974, c. 60, s. 3.

(3) Any person who was entitled to insured services without the payment of a premium or to premium assistance immediately before the 1st day of April, 1972 continues to be so entitled under this Act, subject to the provisions thereof. 1972, c. 91, s. 14 (3). Continuation of premium relief or assistance

**16.**—(1) In this section, “employees” includes the employer of the employees if the employer is an individual or a member of a partnership. Interpretation

(2) Where the number of employees of an employer totals fifteen or more, the employees who are residents of Ontario are a mandatory group. Mandatory group

(3) Where the number of employees of an employer totals more than five but fewer than fifteen, the General Manager may upon application therefor designate the employees who are residents of Ontario as a mandatory group. 1974, c. 60, s. 4. Voluntary creation of mandatory group

(4) Every person who is a member of a mandatory group shall be an insured person in accordance with this Act and the regulations. Coverage

(5) The employer shall deduct from the remuneration of each employee in his mandatory group the premiums required under this Act or such part as is agreed upon by the employer and his employee, but each member of the group is primarily liable to pay the premium. Deductions by employer

(6) The deduction by an employer from the remuneration of an employee in his mandatory group of the premium required under this Act shall discharge the primary liability of that employee to pay the premium so deducted. Effect of deduction by employer

(7) No person shall make any charge for acting in his capacity as the employer of a mandatory group. 1972, c. 91, s. 15 (3-6). No service charge

**17.**—(1) Upon the application of an organization having fifteen or more members who are residents of Ontario and wish to apply for health insurance, the General Manager may designate the organization a collector’s group and shall designate the person who shall be the collector. Collector’s groups

(2) Each member of the group is primarily liable to pay the premium. Liability to pay premium

(3) No person shall make any charge for acting in his capacity as a collector. No service charge

Government  
of Canada  
groups

(4) The General Manager may, at the request of the Government of Canada, designate as a collector's group any group for whom and on whose behalf the Government of Canada undertakes to remit the premiums and information in the prescribed form. 1972, c. 91, s. 16.

Premiums for  
remittance  
in trust

18. Every person who receives, retains or withholds any amount for the purpose of paying a premium on behalf of an insured person shall be deemed to have received and to be holding the amount in trust for the Treasurer of Ontario and all accounts of such premium amounts shall be kept separate and apart from his own money. 1972, c. 91, s. 17.

Choice of  
physician or  
practitioner

19. This Act shall not be administered or construed to affect the right of an insured person to choose his own physician or practitioner, and does not impose any obligation upon any physician or practitioner to treat an insured person. 1972, c. 91, s. 18.

Other  
insurance  
prohibited  
R.S.O. 1980,  
c. 218, s. 232

20.—(1) Every contract of insurance, other than insurance provided under section 232 of the *Insurance Act*, for the payment of or reimbursement or indemnification for all or any part of the cost of any insured services other than,

- (a) any part of the cost of hospital, ambulance and nursing home services that is not paid by the Plan;
- (b) compensation for loss of time from usual or normal activities because of disability requiring insured services,

performed in Ontario for any person eligible to become an insured person under this Act, is void and of no effect in so far as it makes provision for insuring against the costs payable by the Plan and no person shall enter into or renew such a contract.

Resident not  
to benefit  
from pro-  
hibited  
insurance

(2) A resident shall not accept or receive any benefit under any contract of insurance prohibited under subsection (1) whereby he or his dependants may be provided with or reimbursed or indemnified for all or any part of the costs of, or costs directly related to the provision of any insured service.

Exceptions

(3) Subsections (1) and (2) do not apply to a contract of insurance entered into by a resident whose principal employment is in the United States of America and who is entitled to enter into the contract by virtue of his employment.

Idem

(4) Where payment is made to or on behalf of an insured person under a contract or agreement referred to in sub-

section (3) and such payment is less than would have been made under this Act and the regulations for the same insured services, the General Manager may pay to or on behalf of the insured person the difference between the amount paid under the contract or agreement and the amount established by the regulations for the insured services for which payment was made under the contract or agreement.

(5) Subsections (1) and (2) do not apply for the first three months after a person takes up residence in Ontario. 1972, c. 91, s. 19. Exception for first three months

**21.**—(1) Subject to subsection (6), a physician may submit his accounts for the performance of insured services directly to the Plan for payment thereof directly to him by notifying the General Manager of his intention to do so in the manner and subject to the requirements prescribed by the regulations. Billing the Plan

(2) Where a physician submits his accounts directly to the Plan under this section, he shall thereafter submit all his accounts for the performance of insured services directly to the Plan in accordance with and subject to the requirements of this Act and the regulations. Methods of billing prohibited

(3) Where a physician submits his accounts directly to the Plan under this section, Requirements where Plan billed

(a) payment thereof shall be made directly to him;

(b) he shall not submit any account for any amount to the patient in respect of insured services; and

(c) the payment by the Plan for the insured services performed constitutes payment in full of the account therefor.

(4) A physician may at any time notify the General Manager in writing that he intends to cease submitting his accounts directly to the Plan and subsection (3) ceases to apply to him on and after the first day of the third month next following the month in which the General Manager receives such notification. Notification about leaving Plan

(5) The General Manager shall not make any payment in respect of the performance of insured services directly to any physician who does not submit his accounts therefor directly to the Plan under this section. Plan not to pay directly

(6) Every physician who was submitting his accounts directly to the Plan immediately prior to the 1st day of April, 1972 shall be considered to be one who is submitting his accounts directly to the Plan under this Act. 1972, c. 91, s. 20. Transitional provision

Billing by  
practitioner

**22.**—(1) A practitioner engaged in the practice of a discipline designated by the regulations may submit his accounts for the performance of insured services directly to the Plan for payment thereof directly to him by notifying the General Manager of his intention to do so in the manner and subject to the requirements prescribed by the regulations.

Methods of  
billing  
prohibited

(2) Where a practitioner submits his accounts directly to the Plan under this section, he shall thereafter submit all his accounts for the performance of insured services directly to the Plan in accordance with and subject to the requirements of this Act and the regulations.

Require-  
ments where  
Plan billed

(3) Where a practitioner submits his accounts directly to the Plan under this section,

- (a) payment thereof shall be made directly to him;
- (b) he shall not submit any account for any amount to the patient in respect of insured services; and
- (c) the payment by the Plan for the insured services performed constitutes payment in full of the account therefor.

Notification  
about leaving  
Plan

(4) A practitioner may at any time notify the General Manager in writing that he intends to cease submitting his accounts directly to the Plan and subsection (3) ceases to apply to him on and after the first day of the third month next following the month in which the General Manager receives such notification.

Plan not  
to pay  
directly

(5) The General Manager shall not make any payment in respect of the performance of insured services directly to any practitioner engaged in the practice of a discipline designated by the regulations who does not submit his accounts therefor directly to the Plan under this section.

Transitional  
provision

(6) Every practitioner engaged in the practice of a discipline designated by the regulations who was submitting his accounts directly to the Plan immediately before the discipline is designated by the regulations for the purpose of this section shall be considered to be one who is submitting his accounts directly to the Plan under this Act. 1975, c. 52, s. 3.

Form of  
accounts

**23.**—(1) Every physician and practitioner shall submit his accounts for insured services performed by him in such form as the General Manager shall prescribe, whether such accounts are submitted directly to the Plan or are submitted to the patient.

(2) An account for insured services performed by a physician or a practitioner shall be submitted to the General Manager by the physician or the practitioner, or by the patient where the patient is billed directly, as the case may be, not later than six months after the insured services are performed but the General Manager may pay the account after that time where there are extenuating circumstances. 1972, c. 91, s. 21.

Limitation  
for payment  
of accounts

**24.**—(1) Subject to section 26, the General Manager shall approve and assess claims for insured services, determine the amounts to be paid therefor and authorize the payment thereof in accordance with this Act and the regulations. 1972, c. 91, s. 22 (1).

Duty of  
General  
Manager

(2) Notwithstanding any action taken by the General Manager under subsection (1), where, in respect of insured services rendered by a physician, it appears to the General Manager on reasonable grounds that,

Refusal or  
reduction of  
claims

- (a) all or part of the insured services were not in fact rendered;
- (b) all or part of such services were not medically necessary;
- (c) all or part of such services were not provided in accordance with accepted professional standards and practice; or
- (d) the nature of the services is misrepresented,

the General Manager shall refer the matter to the Medical Review Committee and the Medical Review Committee may recommend to the General Manager that he pay, or refuse or reduce payment of, or require and recover reimbursement from the physician of any overpayment of, the amount otherwise payable and, subject to sections 26 to 30 and subsections 31 (3) to (9), the General Manager shall carry out the recommendations of the Committee. 1974, c. 60, s. 5 (1); 1975, c. 52, s. 4 (1).

(3) Notwithstanding any action taken by the General Manager under subsection (1), where, in respect of insured services rendered by a practitioner who is engaged in the practice of a health discipline in respect of which a practitioner review committee has been appointed under this Act, it appears to the General Manager on reasonable grounds that,

Idem

- (a) all or part of the insured services were not in fact rendered;
- (b) all or part of such services were not therapeutically necessary;

- (c) all or part of such services were not provided in accordance with accepted professional standards and practice; or
- (d) the nature of the services is misrepresented,

the General Manager shall refer the matter to the practitioner review committee appointed in respect of the health discipline in which the practitioner is engaged in practice and the practitioner review committee may recommend to the General Manager that he pay, or refuse or reduce payment of, or require and recover reimbursement from the practitioner of any overpayment of, the amount otherwise payable and, subject to sections 26 to 30 and subsections 31 (3) to (9), the General Manager shall carry out the recommendations of the committee. 1974, c. 60, s. 5 (2); 1975, c. 52, s. 4 (2).

Deduction  
re over-  
payment

(4) The General Manager may deduct from the amount payable by the Plan to a physician or practitioner an amount that shall be retained by the Plan equal to the amount of any overpayment by the Plan to the physician or practitioner. 1974, c. 60, s. 5 (3).

Where  
hearing  
required  
or appeal  
taken

(5) Where a hearing is required or an appeal is taken pursuant to sections 26 to 30, the General Manager shall carry out the recommendations of the Medical Review Committee or of a practitioner review committee made pursuant to subsection (2) or (3) pending the decision or order of the Appeal Board or the Supreme Court. 1974, c. 86, s. 1.

When services  
not medically  
necessary

**25.**—(1) Where there is a dispute regarding a decision by the General Manager that an insured person is not entitled to an insured service in a hospital or health facility because such service is not medically necessary, the General Manager, upon receiving notice of such dispute, shall refer the matter to the Medical Eligibility Committee.

Medical  
Eligibility  
Committee  
to consider

(2) The Medical Eligibility Committee shall consider the facts relevant to the disputed decision, including any medical records and reports about the insured person and, when considered necessary by the Committee, interviewing the insured person and discussing the matter with him and his physician.

Recommendations

(3) After giving consideration to the matter, the Medical Eligibility Committee shall recommend to the General Manager either that he pay or that he refuse to pay, according to the findings of the Committee, the sum or sums claimed by the insured person to be payable to him or on his behalf, as the case may be, and that the General Manager approve or refuse to approve, in accordance with the

recommendations of the Committee, the provision of the insured service or services that are in dispute and, subject to sections 26 to 30, the General Manager shall carry out the recommendations of the Committee. 1972, c. 91, s. 23.

**26.—(1)** Where the General Manager,

Refusal  
of claim

- (a) refuses an application to become or continue to be an insured person;
- (b) refuses an application for relief from or assistance in the payment of the premium;
- (c) refuses a claim for payment for insured services or reduces the amount so claimed to an amount less than the amount payable by the Plan;
- (d) carries out a recommendation of the Medical Review Committee or a practitioner review committee that he require and recover reimbursement of any overpayment by the Plan,

the General Manager shall serve notice on the applicant, claimant, physician or practitioner, as the case may be, of his decision, together with written reasons therefor. 1972, c. 91, s. 24 (1); 1974, c. 60, s. 6; 1975, c. 52, s. 5.

(2) A notice under subsection (1) shall inform the applicant or claimant that he is entitled to a hearing by the Appeal Board if he mails or delivers to the General Manager and to the Appeal Board, within fifteen days after the notice is served on him, notice in writing requiring a hearing and he may so require such a hearing. 1972, c. 91, s. 24 (2).

Notice

**27.—(1)** Where a person requires a hearing by the Appeal Board, the Appeal Board shall appoint a time for and hold the hearing and may by order direct the General Manager to take such action as the Appeal Board considers the General Manager should take in accordance with this Act and the regulations, and for such purposes the Appeal Board may substitute its opinion for that of the General Manager.

Powers of  
Appeal Board  
where hearing

(2) The Appeal Board may extend the time for the giving of notice by a person requiring a hearing under this section, either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for granting relief to the claimant pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the Appeal Board may give such directions as it considers proper consequent upon the extension. 1972, c. 91, s. 25.

Extension of  
time for  
hearing

Parties

**28. The General Manager and,**

- (a) in the case of a refusal under clause 26 (1) (a) or (b), the applicant;
- (b) in the case of a refusal or reduction under clause 26 (1) (c), the insured person and his physician or practitioner; or
- (c) in the case of the carrying out of a recommendation under clause 26 (1) (d), the insured person and his physician or practitioner and the Medical Review Committee or practitioner review committee, as the case may be,

and such other persons as the Appeal Board may specify, are parties to proceedings before the Appeal Board. 1975, c. 52, s. 6.

Examination  
of document-  
ary evidence

**29.—**(1) A person who is a party to proceedings before the Appeal Board shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board mem-  
bers not to  
have investi-  
gated prior to  
hearing

(2) Members of the Appeal Board holding a hearing shall not have taken part, before the hearing, in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and with opportunity for all parties to participate, but the Appeal Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording  
evidence

(3) The oral evidence taken before the Appeal Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings  
of fact

(4) The findings of fact of the Appeal Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under section 15 or 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484Only mem-  
bers at  
hearing to  
participate

(5) No member of the Appeal Board shall participate in a decision of the Appeal Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence

and argument of the parties and, except with the consent of the parties, no decision of the Appeal Board shall be given unless all members so present participate in the decision.

(6) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Appeal Board within a reasonable time after the matter in issue has been finally determined. 1972, c. 91, s. 27. Release of documents, etc.

**30.**—(1) Any party to the proceedings before the Appeal Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court. Appeal to Divisional Court

(2) Where any party appeals from a decision or order of the Appeal Board, the Appeal Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Appeal Board's record, shall constitute the record in the appeal. Record to be filed in court

(3) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section. Minister to be heard

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Appeal Board and may exercise all powers of the Appeal Board to direct the General Manager to take any action which the Appeal Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the General Manager or of the Appeal Board, or the court may refer the matter back to the Appeal Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1972, c. 91, s. 28. Powers of court on appeal

**31.**—(1) Where a decision of the General Manager to refuse or reduce a payment or to require and recover reimbursement of any overpayment of any amount paid by the Plan on any of the grounds referred to in clauses 24 (2) (a) to (d) or 24 (3) (a) to (d) has become final, the General Manager shall furnish the Minister and the governing body of the profession of which the physician or practitioner rendering the services is a member with a copy of the decision and the reasons therefor, and in all other cases the General Manager may furnish such governing body with a copy of the decision and the reasons therefor. 1975, c. 52, s. 7 (1). Furnishing reasons to professional governing body

(2) Where the claim for an account for insured services of a physician or practitioner who is not submitting his accounts Insured person not liable for amount that account is reduced

directly to the Plan is refused or reduced on any of the grounds referred to in clauses 24 (2) (a) to (d) or 24 (3) (a) to (d), the insured person is not liable to the physician or practitioner for the difference between the amount to which the General Manager reduces the account on such grounds and the amount that would otherwise be payable under the Plan. 1972, c. 91, s. 29 (2); 1974, c. 60, s. 7 (2).

**Notice**

(3) Where a decision of the General Manager to carry out a recommendation referred to in clause 26 (1) (d) has become final in respect of a physician or practitioner who is not submitting his accounts directly to the Plan, the General Manager may serve notice on the physician or practitioner of the amount of the overpayment to be recovered by the General Manager from the physician or practitioner.

**Contents of notice**

(4) A notice under subsection (3) shall set out or be accompanied by a written statement that identifies each of the insured services and the amount paid by the Plan for each of the services, and the notice shall inform the physician or practitioner that he is entitled to a hearing by the Appeal Board in respect of the services for the purpose of ensuring that the amount to be recovered from the physician or practitioner in respect of each of the services does not exceed the amount received by the physician or practitioner for the service if the physician or practitioner mails or delivers to the General Manager and to the Appeal Board, within fifteen days after the notice is served on him, notice in writing requiring a hearing and he may so require such a hearing.

**Duty of Board**

(5) On a hearing under this section, the Appeal Board shall determine the amount received by the physician or practitioner for each service identified in the statement mentioned in subsection (4), and the amount of the reimbursement to the Plan to be recovered from the physician or practitioner in respect of each of the services shall not exceed the amount that the Appeal Board determines was received by the physician or practitioner for the service.

**Parties**

(6) The General Manager, the physician or practitioner and such other persons as the Appeal Board may specify are parties to the proceedings before the Appeal Board under this section.

**Application of s. 27 (2), ss. 29, 30**

(7) Subsection 27 (2) and sections 29 and 30 apply to proceedings before the Appeal Board under this section.

(8) Where notice is served pursuant to subsection (3) and no hearing is required or no appeal is taken or the decision referred to in subsection (3) is confirmed or varied upon a hearing or an appeal, the General Manager may file a copy of the decision or of the decision as confirmed or varied, including the amount to be recovered from the physician or practitioner by the General Manager for reimbursement to the Plan and excluding the reasons for the decision or for the decision as confirmed or varied, in the office of the Registrar of the Supreme Court and the decision shall be entered and is enforceable in the same way as a judgment of the Supreme Court.

Decision  
may be  
filed and  
enforced

(9) Where the Appeal Board or the Divisional Court extends the time for a hearing or an appeal and a decision has been filed in the office of the Registrar of the Supreme Court, the Appeal Board or the Divisional Court, as the case may be, may stay the enforcement of the decision pending the hearing or appeal. 1975, c. 52, s. 7 (2).

Stay of  
enforcement  
of decision

**32.** Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom the notice is being given at his latest known address and, where notice is served by registered mail, the service shall be considered to have been made on the seventh day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. 1972, c. 91, s. 30; 1975, c. 52, s. 8.

Service  
of notice

**33.** At least six months before any proposed revision of the schedule of fees of the Ontario Medical Association, the Ontario Medical Association shall notify the Minister of the proposed revision and the Minister shall arrange and implement discussions with representatives of the said Association respecting the details and extent of any proposed changes in the schedule of fees. 1972, c. 91, s. 31.

Proposed  
revision of  
O.M.A. sched-  
ule of fees

**34.** Any amounts payable to or on behalf of an insured person under the Plan in respect of insured services provided by or in a hospital or health facility may be paid in the form of the payment by the Province of all or any part of the annual expenditures of such hospital or health facility, where such payment by the Province is authorized under any Act. 1972, c. 91, s. 32.

Payment by  
contribution  
to annual  
expenditures

Particulars  
of account

**35.**—(1) Every physician and practitioner who performs an insured service for an insured person shall provide the insured person, or the General Manager, with the particulars of his services and account that are required by this Act and the regulations or the General Manager for the purpose of payment of the claim.

Information  
authorized

(2) Every insured person shall be deemed to have authorized his physician or practitioner who performed insured services to provide the General Manager with such information respecting the insured services performed as the General Manager requires for the purposes of the Plan.

Immunity  
for disclosure

(3) No action lies against a physician, practitioner, hospital or related health facility providing insured services or any member of his or its staff because of the furnishing to the General Manager information relating to insured services provided by him or it. 1972, c. 91, s. 33.

#### SUBROGATION

Subrogation

**36.**—(1) Where, as the result of the negligence or other wrongful act or omission of another, an insured person suffers personal injuries for which he receives insured services under this Act, the Plan is subrogated to any right of the insured person to recover the cost incurred for past insured services and the cost that will probably be incurred for future insured services, and the General Manager may bring action in the name of the Plan or in the name of that person for the recovery of such costs.

Payment by  
Plan recover-  
able by  
insured

(2) For the purposes of subsection (1), the payment by the Plan for insured services shall not be construed to affect the right of the insured person to recover the amounts so paid in the same manner as if such amounts are paid or to be paid by the insured person.

Cost of  
hospital  
services

(3) For the purposes of this section, the cost of insured services rendered to an insured person in or by a hospital or health facility shall be at the rate charged by the hospital or health facility to a person who is not an insured person. 1972, c. 91, s. 35.

Subrogated  
claim  
included in  
action

**37.**—(1) Any person who commences an action to recover for loss or damages arising out of the negligence or other wrongful act of a third party, to which the injury or disability in respect of which insured services have been provided is

related shall, unless otherwise advised in writing by the General Manager, include a claim on behalf of the Plan for the cost of the insured services.

(2) Where a person recovers a sum in respect of the cost of insured services, he shall forthwith pay the sum recovered to the Treasurer of Ontario. 1972, c. 91, s. 36. Recovery paid to Ontario

**38.** The Plan is not an insurer within the meaning of the *Insurance Act*, as referred to in section 20 of the *Motor Vehicle Accident Claims Act*, and may be awarded payment from the Motor Vehicle Accident Claims Fund. 1972, c. 91, s. 37. Motor Vehicle Accident Claims Fund R.S.O. 1980, cc. 218, 298

**39.** The judge at trial shall, if the evidence permits, apportion the elements of the injured person's loss and damages so as to clearly designate the amount of the Plan's recovery for the past cost of insured services and separate it from the amount of the Plan's recovery of future cost of insured services, if any. 1972, c. 91, s. 38. Judge to divide award

**40.** No release or settlement of a claim for damages for personal injuries in a case where the injured person has received insured services under this Act shall be binding on the Plan unless the General Manager has approved the release or settlement. 1972, c. 91, s. 39. Release not to bind Plan

**41.** A liability insurer shall notify the General Manager of negotiations for settlement of any claim for damages including insured services and may pay to the Treasurer of Ontario any amount referable to a claim for recovery of the cost of insured services and such payment discharges the obligation of the liability insurer to pay that amount to the insured person. 1972, c. 91, s. 40. Insurer to pay Ontario

**42.** Where a judgment or settlement includes future cost of insured services, the Plan shall provide the future insured services included in the judgment or settlement. 1972, c. 91, s. 41. Future insured services

#### GENERAL

**43.—(1)** The Minister, from among persons nominated for such purpose by The College of Physicians and Surgeons of Ontario, may appoint in writing medical and financial inspectors with the duty and power to inspect, examine and audit books, accounts, reports and medical records maintained inspectors

in hospitals and health facilities, offices of physicians and other health care facilities respecting patients who are receiving or who have received insured services, and such medical and financial inspectors shall act only at the direction of the Medical Review Committee. 1972, c. 91, s. 43 (1); 1974, c. 60, s. 8 (1).

Idem

(2) The Minister, from among persons nominated for such purpose by a body referred to in section 6 that nominates persons for appointment to a practitioner review committee in respect of a health discipline, may appoint in writing practitioner and financial inspectors with the duty and power to inspect, examine and audit books, accounts, reports and records maintained in hospitals and health facilities, offices of practitioners and other health care facilities respecting patients who are receiving or who have received insured services provided by or at the direction of one or more practitioners engaged in the practice of the health discipline in respect of which the practitioner review committee has been appointed, and such practitioner and financial inspectors shall act only at the direction of such practitioner review committee. 1974, c. 60, s. 8 (2).

Obstructions

(3) No person shall obstruct a medical or practitioner or financial inspector in the performance of his duties under this Act and the regulations. 1972, c. 91, s. 43 (2); 1974, c. 60, s. 8 (3).

Information  
confidential

**44.**—(1) Each member of the Medical Review Committee, every practitioner review committee, the Medical Eligibility Committee and the Appeal Board and each employee thereof, the General Manager and each person engaged in the administration of this Act and the regulations shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties pertaining to insured persons and any insured services rendered and the payments made therefor, and shall not communicate any such matters to any other person except as otherwise provided in this Act. 1972, c. 91, s. 44 (1); 1974, c. 60, s. 9.

Exceptions

(2) A person referred to in subsection (1) may furnish information pertaining to the date or dates on which insured services were provided and for whom, the name and address of the hospital and health facility or person who provided the services, the amounts paid or payable by the Plan for such services and the hospital, health facility or person to whom the money was paid or is payable, but such information shall be furnished only,

- (a) in connection with the administration of this Act, the *Health Disciplines Act*, the *Public Hospitals Act*, the *Private Hospitals Act* or the *Ambulance Act* or the *Hospital Insurance and Diagnostic Services Act* (Canada), the *Medical Care Act* (Canada) or the *Criminal Code* (Canada), or regulations made thereunder; R.S.O. 1980, cc. 196, 410, 389, 20  
R.S.C. 1970, cc. H-8, M-8, C-34
- (b) in proceedings under this Act or the regulations;
- (c) to the person who provided the service, his solicitor or personal representative, the executor, administrator or committee of his estate, his trustee in bankruptcy or other legal representative;
- (d) to the person who received the services, his solicitor, personal representative or guardian, the committee or guardian of his estate or other legal representative of that person; or
- (e) pursuant to a subpoena by a court of competent jurisdiction. 1972, c. 91, s. 44 (2); 1974, c. 86, s. 2.

(3) The information referred to in subsection (1) may be published by the Ministry of Health in statistical form if the individual names and identities of persons who received insured services are not thereby revealed. Statistical purposes

(4) The General Manager may communicate information of the kind referred to in subsection (2) and any other information pertaining to the nature of the insured services provided and any diagnosis given by the person who provided the services to the statutory body governing the profession or to a professional association of which he is a member. 1972, c. 91, s. 44 (3, 4). Exception for professional discipline

**45.** Members of the Medical Review Committee, practitioner review committees, the Medical Eligibility Committee, or the Appeal Board and employees thereof, the General Manager and persons engaged in the administration of this Act are not liable for anything done or made *bona fide* by them in the performance of their duties under this Act and the regulations. 1972, c. 91, s. 45; 1974, c. 60, s. 10. Protection from liability

**46.—(1)** Any person designated in writing by the General Manager may at any time enter the premises of an employer of a mandatory group or a collector under this Act and inspect Inspections

the books of account, payroll records and other records for the purpose of obtaining information relating to the membership of the group.

Access for  
inspection

(2) Every person, when requested to do so by a person designated under subsection (1), shall produce and permit inspection of the accounts and records and supply extracts therefrom.

Obstruction  
of inspector

(3) No person shall hinder or obstruct a person designated under subsection (1) in the performance of his duties or refuse to permit him to carry out his duties or refuse to furnish him with information or furnish him with false information. 1972, c. 91, s. 46.

Offence,  
failure to re-  
mit premiums

**47.**—(1) Subject to subsection (2), an employer or collector who fails to remit the premiums required to be remitted under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$2,000.

Order to pay  
premiums

(2) Where an employer or collector is convicted of an offence under subsection (1), the provincial offences court shall determine the amount of the premiums the employer failed to remit and shall make an order requiring the person convicted to remit the amount so determined to the General Manager.

Liability of  
officers and  
directors

(3) Every director or officer of a corporation who knowingly concurs in a failure to remit the premiums required to be remitted by the corporation under this Act is liable, jointly and severally with every other such officer and director, to make a payment ordered to be made under subsection (2). 1972, c. 91, s. 47.

Liability of  
directors on  
winding up

**48.** Where an employer or collector that is a corporation fails to remit the premiums required to be remitted under this Act, and,

(a) goes into liquidation;

(b) is ordered to be wound up;

(c) makes an authorized assignment under the *Bankruptcy Act* (Canada);

(d) has a receiving order under the *Bankruptcy Act* (Canada) made against it; or

(e) ceases to carry on its undertaking,

R.S.C. 1970,  
c. B-4

the directors thereof are jointly and severally liable for the payment of the amount of the premiums in default. 1972, c. 91, s. 48; 1974, c. 60, s. 11.

**49.**—(1) No person shall knowingly obtain or attempt to obtain payment for or receive or attempt to receive the benefit of any insured service that he is not entitled to obtain or receive under this Act and the regulations. <sup>Offence benefits by fraud</sup>

(2) No person shall knowingly aid or abet another person to obtain or attempt to obtain payment for or receive or attempt to receive the benefit of any insured service that such other person is not entitled to obtain or receive under this Act and the regulations. 1972, c. 91, s. 49. <sup>Idem</sup>

(3) No person shall knowingly give false information in an application, return or statement made to the Plan or to the General Manager in respect of any matter under this Act or the regulations. 1974, c. 86, s. 3. <sup>False information</sup>

**50.** Every person who contravenes any provision of this Act or the regulations for which no penalty is specifically provided is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1972, c. 91, s. 50. <sup>General penalty</sup>

**51.**—(1) The Lieutenant Governor in Council may make regulations, <sup>Regulations</sup>

- (a) providing for the enrolment of persons as insured persons and prescribing waiting periods therefor;
- (b) prescribing who are dependants of insured persons for the purposes of this Act;
- (c) prescribing the persons who shall be deemed employees for the purposes of section 16 and the employees who shall be members of a mandatory group;
- (d) governing the collection, accounting for and remission of premiums by employers of mandatory groups and by collectors and requiring employers and collectors to furnish such information and returns as are prescribed;
- (e) providing for the conditions under which a mandatory group shall continue notwithstanding its reduction

in numbers and for the termination of mandatory and collectors' groups;

- (f) providing for the continuation and termination of insurance coverage in respect of insured persons who cease to be eligible;
- (g) prescribing the qualifications for assistance in the payment of premiums and for determining the amount thereof;
- (h) prescribing the premiums that shall be paid by or on behalf of insured persons and specifying the time and manner of making such payments;
- (i) designating disciplines for the purpose of section 22;
- (j) prescribing the services rendered in or by hospitals and health facilities and by practitioners that are insured services;
- (k) prescribing the amounts payable by the Plan for insured services rendered in or outside of Ontario in or by hospitals and health facilities and by physicians and practitioners and the conditions for their performance and for payment, but no schedule of payments shall be prescribed under this clause that disqualifies the Plan for contribution by the Government of Canada under the *Medical Care Act* (Canada);
- (l) prescribing services that shall be deemed not to be insured services for the purposes of this Act and the conditions under which the costs of any class of insured services are payable and limiting the payment commensurate with the circumstances of the performance of the services;
- (m) prescribing services that, notwithstanding any provision of this Act, shall be deemed,
  - (i) not to be insured services in respect of prescribed age groups of insured persons, or
  - (ii) to be insured services only in respect of prescribed age groups of insured persons,

but no service or age group shall be prescribed under this clause that disqualifies the Plan as a medical care insurance plan under the *Medical Care Act* (Canada);

- (n) providing for the making of claims for payment of the cost of insured services and prescribing the information that shall be furnished in connection therewith;
- (o) prescribing the co-payments that shall be made by or on behalf of an insured person, in addition to the payment of the premiums, to qualify him to receive those insured services specified in the regulations as requiring co-payments;
- (p) providing for the times when and manner in which physicians may submit accounts directly to the Plan under section 21;
- (q) providing for the times when and manner in which practitioners may submit accounts directly to the Plan under section 22;
- (r) exempting any class of accounts from the application of section 21 or any provision thereof;
- (s) exempting any class of accounts from the application of section 22 or any provision thereof;
- (t) requiring as a condition to payment for insured services or any class thereof that they be provided in or by designated hospitals or health facilities or any class thereof;
- (u) prescribing facilities that are health facilities for the purposes of this Act in addition to those referred to in clause 1 (f);
- (v) prescribing procedures for the enforcement of and recovery under rights to which the Plan is subrogated and without restricting the generality of the foregoing,
  - (i) requiring the insured person and his solicitor to act on behalf of the Plan in any action,
  - (ii) requiring such notices as are prescribed,
  - (iii) providing for the terms and conditions under which an action to enforce such rights may be begun, conducted and settled,
  - (iv) prescribing the portion of the costs of an insured person incurred in an action for the recovery of such rights that shall be borne by the Plan;

(w) assigning additional duties to the General Manager, the Medical Review Committee, practitioner review committees, the Medical Eligibility Committee and the Appeal Board;

(x) prescribing forms for the purposes of this Act and providing for their use. 1972, c. 91, s. 51; 1974, c. 60, s. 12; 1975, c. 52, s. 9 (1, 2).

Adoption of  
schedules  
of fees

(2) A regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, the fees in any schedule of fees as prescribed amounts payable in whole or in part, by the Plan. 1974, c. 86, s. 4.

When  
regulation  
may be  
effective

(3) A regulation is, if it so provides, effective with reference to a period before it is filed. 1975, c. 52, s. 9 (3).

#### MENTAL ILLNESS

Interpre-  
tation  
R.S.O. 1980,  
cc. 391, 69,  
79, 262, 263

**52.**—(1) In this section, “hospital” means a sanitarium licensed under the *Private Sanitaria Act* that is approved by the Minister for the purposes of this section, a children’s mental health centre or an approved children’s mental health centre under the *Children’s Mental Health Services Act*, a hospital established or approved under the *Community Psychiatric Hospitals Act*, a psychiatric facility under the *Mental Health Act*, or an institution designated an approved home or residential unit under the *Mental Hospitals Act*.

Insured  
person  
entitled

(2) An insured person who is entitled to insured services under this Act and the regulations and who is admitted to a hospital under this section is entitled to such services as are required for his maintenance, care, diagnosis and treatment in accordance with this Act and the regulations without being required to pay or have paid on his behalf any additional premium or other charge beyond that necessary to entitle him to insured services under the Plan.

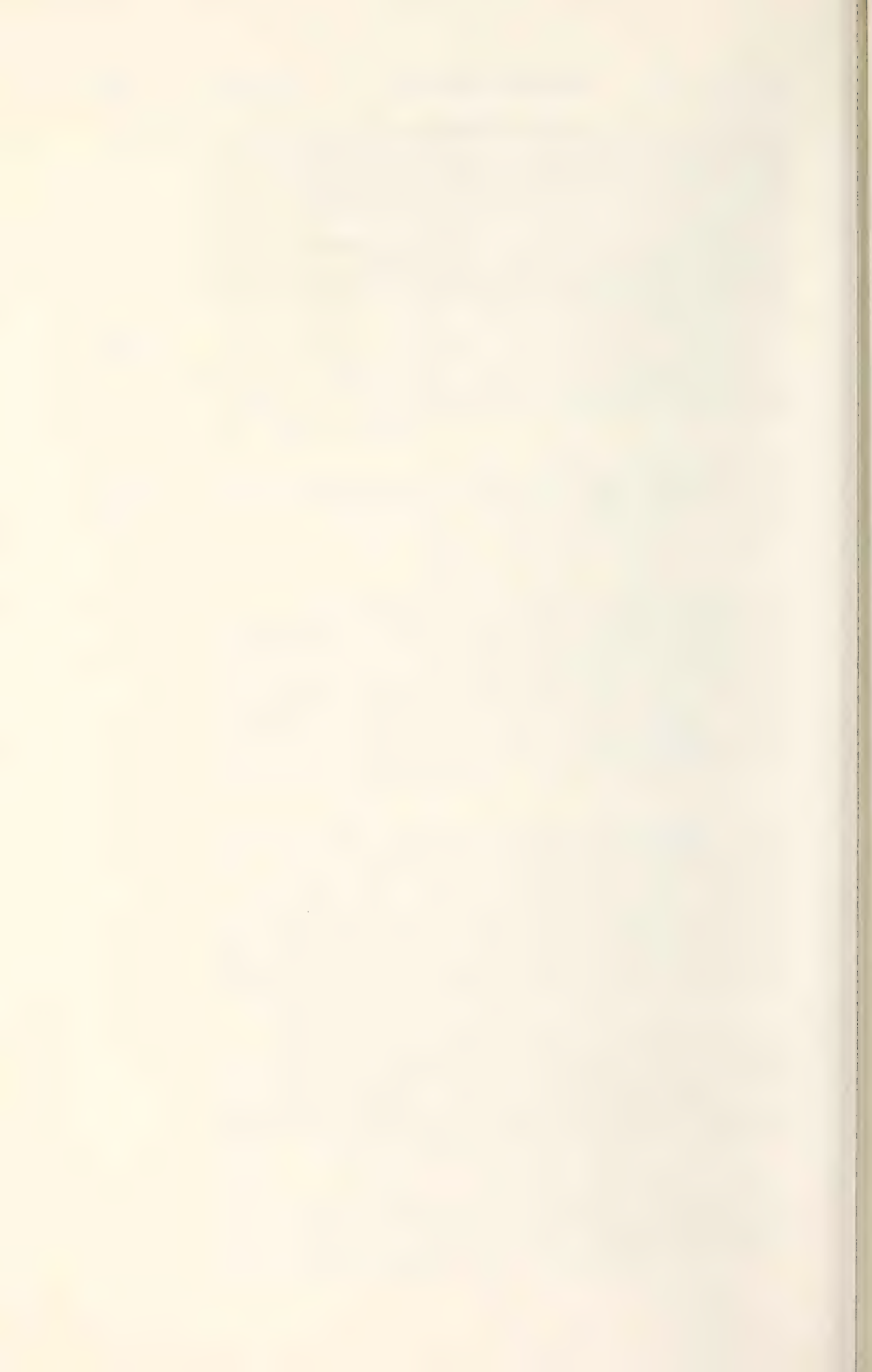
Exceptions

(3) Notwithstanding subsection (2), an insured person in respect of whom, but for this Act, the Government of Canada would have assumed the cost of the maintenance, care, diagnosis and treatment provided under this section is not entitled to receive insured services in a hospital as an insured person.

Accounts

(4) The General Manager shall keep the accounts, if any, of insured persons who receive hospital services under this section separate from the accounts of patients who receive insured services under the Plan.

(5) Where, as the result of negligence or other wrongful act or omission of another, an insured person suffers personal injuries for which he receives services under this section, the Plan is subrogated to any right of the insured person to recover the cost incurred for such services, past or future, and the provisions of this Act and the regulations applying to subrogation of the Plan for the cost of insured services apply, with necessary modifications, to subrogation of the Plan for the cost of services under this section. 1972, c. 91, s. 52. Subrogation



## CHAPTER 198

## Highway Traffic Act

## 1.—(1) In this Act,

Interpre-  
tation

1. “Board” means the Licence Suspension Appeal Board referred to in section 31; 1973, c. 167, s. 1 (1), *part*.
2. “built-up area” means the territory contiguous to a highway not within a city, town, village or police village where,
  - i. not less than 50 per cent of the frontage upon one side of the highway for a distance of not less than 200 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or
  - ii. not less than 50 per cent of the frontage upon both sides of the highway for a distance of not less than 100 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or
  - iii. not more than 200 metres of the highway separates any territory described in subparagraph i or ii from any other territory described in subparagraph i or ii,and signs are displayed as required by the regulations; 1977, c. 19, s. 1 (1).
3. “bus” means a motor vehicle designed for carrying ten or more passengers and used for the transportation of persons; 1973, c. 45, s. 1 (1); 1973, c. 167, s. 1 (1), *part*.
4. “chauffeur” means a person who operates a motor vehicle and receives compensation therefor; R.S.O. 1970, c. 202, s. 1 (1), par. 2.
5. “commercial motor vehicle” means a motor vehicle having permanently attached thereto a truck or

delivery body and includes ambulances, hearses, casket wagons, fire apparatus, buses and tractors used for hauling purposes on the highways; R.S.O. 1970, c. 202, s. 1 (1), par. 3; 1973, c. 167, s. 1 (2).

6. "conversion unit" means a mechanical device consisting of a single axle designed to convert a two-axle vehicle into a three-axle vehicle;
7. "crosswalk" means,
  - i. that part of a highway at an intersection that is included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the roadway, or
  - ii. any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs or by lines or other markings on the surface; R.S.O. 1970, c. 202, s. 1 (1), pars. 4, 5.
8. "Deputy Minister" means the Deputy Minister of Transportation and Communications; R.S.O. 1970, c. 202, s. 1 (1), par. 7; 1972, c. 1, s. 100 (2).
9. "driver" means a person who drives a vehicle on a highway; 1979, c. 57, s. 1 (1).
10. "driver's licence" means a licence issued under section 18 to drive a motor vehicle on a highway; 1976, c. 37, s. 1.
11. "farm tractor" means a self-propelled vehicle designed and used primarily as a farm implement for drawing ploughs, mowing-machines and other implements of husbandry and not designed or used for carrying a load;
12. "garage" means every place or premises where motor vehicles are received for housing, storage or repairs for compensation;
13. "gross weight" means the combined weight of vehicle and load;
14. "highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles;

15. "intersection" means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways that join one another at an angle, whether or not one highway crosses the other; R.S.O. 1970, c. 202, s. 1 (1), pars. 8-12.
16. "King's Highway" includes the secondary highways and tertiary roads designated under the *Public Transportation and Highway Improvement Act*; R.S.O. 1970, c. 202, s. 1 (1), par. 13; 1971, c. 61, s. 1. R.S.O. 1980,  
c. 421
17. "median strip" means the portion of a highway so constructed as to separate traffic travelling in one direction from traffic travelling in the opposite direction by a physical barrier or an unpaved strip of ground; 1974, c. 123, s. 1 (1).
18. "Minister" means the Minister of Transportation and Communications;
19. "Ministry" means the Ministry of Transportation and Communications; 1973, c. 45, s. 1 (2), *part*.
20. "mobile home" means a vehicle, other than a motor vehicle, that is designed and used as a residence or working accommodation unit and exceeds 2.6 metres in width or eleven metres in length; 1973, c. 45, s. 1 (2), *part*; 1978, c. 4, s. 1 (1).
21. "motor assisted bicycle" means a bicycle,
  - i. that is fitted with pedals that are operable at all times to propel the bicycle,
  - ii. that weighs not more than fifty-five kilograms,
  - iii. that has no hand or foot operated clutch or gear-box driven by the motor and transferring power to the driven wheel,
  - iv. that has an attached motor driven by electricity or having a piston displacement of not more than fifty cubic centimetres, and
  - v. that does not have sufficient power to enable the bicycle to attain a speed greater than 50 kilometres per hour on level ground

within a distance of 2 kilometres from a standing start; 1975, c. 78, s. 1 (1); 1977, c. 19, s. 1 (2); 1978, c. 4, s. 1 (2).

22. "motorcycle" means a self-propelled vehicle having a seat or saddle for the use of the driver and designed to travel on not more than three wheels in contact with the ground, and includes a motor scooter, but does not include a motor assisted bicycle; R.S.O. 1970, c. 202, s. 1 (1), par. 16; 1974, c. 123, s. 1 (3).
23. "motor vehicle" includes an automobile, motorcycle, motor assisted bicycle unless otherwise indicated in this Act, and any other vehicle propelled or driven otherwise than by muscular power, but does not include the cars of electric or steam railways, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of this Act; 1975, c. 78, s. 1 (2).
24. "official sign" means a sign approved by the Ministry; R.S.O. 1970, c. 202, s. 1 (1), par. 18; 1972, c. 1, s. 1.
25. "park" or "parking", when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;
26. "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, justice of the peace, jailer or keeper of a prison, and a police officer, constable, bailiff, or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process, or any officer appointed for enforcing or carrying out the provisions of this Act;
27. "pedestrian crossover" means any portion of a roadway, designated by by-law of a municipality, at an intersection or elsewhere, distinctly indicated for pedestrian crossing by signs on the highway and lines or other markings on the surface of the roadway as prescribed by the regulations;
28. "public vehicle" has the same meaning as in the *Public Vehicles Act*;

29. "Registrar" means the Registrar of Motor Vehicles appointed under this Act;
30. "regulations" means the regulations made under this Act; R.S.O. 1970, c. 202, s. 1 (1), pars. 19-25.
31. "road-building machine" means a self-propelled vehicle of a design commonly used in the construction or maintenance of highways, including but not limited to,
- i. asphalt spreaders, concrete paving or finishing machines, motor graders, rollers, tractor-dozers and motor scrapers,
  - ii. tracked and wheeled tractors of all kinds while equipped with mowers, post-hole diggers, compactors, weed spraying equipment, snow blowers and snow plows, front-end loaders, back-hoes or rock drills, and
  - iii. power shovels on tracks and drag lines on tracks,
- but not including a commercial motor vehicle; 1979, c. 57, s. 1 (2).
32. "roadway" means the part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively; R.S.O. 1970, c. 202, s. 1 (1), par. 27.
33. "safety glass" means any product that is composed of glass and so manufactured, fabricated or treated as substantially to prevent the shattering and flying of the glass when struck or broken and that is approved by the Ministry, or such other or similar product that is approved by the Ministry; R.S.O. 1970, c. 202, s. 1 (1), par. 28; 1972, c. 1, s. 1.
34. "self-propelled implement of husbandry" means a self-propelled vehicle manufactured, designed, re-designed, converted or reconstructed for a specific use in farming; R.S.O. 1970, c. 202, s. 1 (1), par. 29.
35. "stand" or "standing", when prohibited, means the halting of a vehicle, whether occupied or not, except for the purpose of and while actually engaged in receiving or discharging passengers;

36. "stop" or "stopping", when prohibited, means the halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a constable or other police officer or of a traffic control sign or signal; R.S.O. 1970, c. 202, s. 1 (1), pars. 31, 32.
37. "through highway" means a highway or part of a highway designated as such by the Minister or by by-law of a municipality, and every such highway shall be marked by a stop sign or yield right-of-way sign in compliance with the regulations of the Ministry; R.S.O. 1970, c. 202, s. 1 (1), par. 33; 1972, c. 1, s. 1; 1974, c. 123, s. 1 (5).
38. "trailer" means a vehicle that is at any time drawn upon a highway by a motor vehicle, except an implement of husbandry, a mobile home, another motor vehicle or any device or apparatus not designed to transport persons or property, temporarily drawn, propelled or moved upon such highway, and except a side car attached to a motorcycle, and shall be considered a separate vehicle and not part of the motor vehicle by which it is drawn; R.S.O. 1970, c. 202, s. 1 (1), par. 34; 1973, c. 45, s. 1 (3).
39. "vehicle" includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or the cars of electric or steam railways running only upon rails; R.S.O. 1970, c. 202, s. 1 (1), par. 35; 1975, c. 78, s. 1 (3).
40. "wheelchair" means a chair mounted on wheels driven by muscular or any other kind of power and used for the carriage of a person who has a physical defect or disability. 1974, c. 123, s. 1 (7).

Suspension  
or cancella-  
tion of  
licence or  
permit

(2) Where in this Act the Minister, a provincial judge, a justice of the peace or other official is authorized or directed to suspend or cancel the licence or permit of any person, and such person is the holder of both a licence and a permit issued under this Act, every such authority extends to both licence and permit and every such direction may in the discretion of the Minister, provincial judge, justice of the peace or other official be made to apply to both licence and permit.

(3) For the purposes of Part VIII and any regulations or municipal by-laws made thereunder, every overpass and underpass shall be deemed to form part of the highway that it connects.

Overpass  
and under-  
pass

(4) Any reference in this Act to the *Criminal Code* (Canada) or any provision thereof shall be deemed to be a reference to the *Criminal Code* (Canada) or the provision thereof as amended or re-enacted from time to time.

References  
to Criminal  
Code  
R.S.C. 1970,  
c. C-34

R.S.O. 1970, c. 202, s. 1 (2-4).

## PART I

### ADMINISTRATION

**2.** Where by this Act powers are conferred or duties are imposed upon the Ministry, such powers may be exercised and such duties discharged by the Minister.

Powers and  
duties of  
Ministry

R.S.O. 1970, c. 202, s. 2; 1972, c. 1, s. 1.

**3.—(1)** There shall be a Registrar of Motor Vehicles appointed by the Lieutenant Governor in Council.

Registrar  
of Motor  
Vehicles

(2) The Registrar shall act under the instructions of the Minister and Deputy Minister and has general supervision over all matters relating to highway traffic within Ontario, and shall perform such duties as are assigned to him by this Act, by the Lieutenant Governor in Council, or by the Minister or Deputy Minister.

Duties

(3) The Minister may authorize the Deputy Minister and the Registrar or either of them to exercise and discharge in his place any of the powers conferred or the duties imposed upon him under this Act or the regulations and, where both the Deputy Minister and the Registrar are so authorized, either of them may exercise and discharge any of such powers and duties.

Delegation  
of powers,  
etc.,  
to Deputy  
Minister  
and Registrar

(4) The Deputy Minister, with the consent of the Minister, may authorize any public servant or servants in the Ministry to exercise any or all of the powers and duties of the Registrar when the Registrar or Deputy Registrar is absent.

Delegation  
of powers  
of Registrar

**4.** There shall be a Deputy Registrar appointed by the Lieutenant Governor in Council who shall have all the powers and may perform all the duties of the Registrar.

Deputy  
Registrar

**5.** The Lieutenant Governor in Council may make regulations,

Regulations  
re fees

- (a) providing for the payment of fees for the issue, renewal, replacement or transfer of permits, licences and number plates under this Act and prescribing the amount of such fees;
- (b) providing for the payment of fees for copies of or access to any writing, paper or document filed in the Ministry pursuant to this Act or any statement containing information from the records of the Ministry and prescribing the amount of such fees;
- (c) providing for the payment of fees upon application to the Ministry for any approval required under this Act in respect of any equipment to be used on a vehicle and prescribing the amount of such fees. R.S.O. 1970, c. 202, s. 5; 1972, c. 1, s. 1.

## PART II

### PERMITS

Interpre-  
tation

#### 6.—(1) In this Part,

- (a) “CAVR cab card” means a cab card issued by the Ministry pursuant to the Canadian Agreement on Vehicle Registration;
- (b) “MVIS number plate” means a number plate issued to a licensee as defined in section 71;
- (c) “number”, when used in relation to a permit or plate, means a number or a combination of letters and numbers, and “numbered”, when so used, means bearing a number or a combination of letters and numbers;
- (d) “permit” means a permit issued or validated under subsection 7 (3) and includes a CAVR cab card;
- (e) “registrant” has the same meaning as in section 71;
- (f) “validate” means render in force for the period of time prescribed by the regulations, and “validation” and “validated” have corresponding meanings. 1974, c. 66, s. 1; 1979, c. 103, s. 1; 1980, c. 71, s. 1.

Commence-  
ment of cls.  
(1) (b) and (e)

- (2) Clauses (1) (b) and (e) do not come into force until a day to be named by proclamation of the Lieutenant Governor. 1979, c. 103, s. 9 (2), *part*.

7.—(1) The owner of a motor vehicle or trailer shall not,

Permit and  
number  
plates  
required

- (a) drive the motor vehicle;
- (b) cause or permit the motor vehicle to be driven;
- (c) draw the trailer; or
- (d) cause or permit the trailer to be drawn,

on a highway except under the authority of a permit for the motor vehicle or trailer. 1974, c. 66, s. 2 (1), *part*; 1980, c. 71, s. 2 (1).

(2) Subsection (1) applies to a self-propelled implement of husbandry that is operated on a highway other than when travelling from farm to farm in relation to the specific use for which it was manufactured, designed, re-designed, converted or reconstructed or in travelling to or from such places as may be necessary for the maintenance or repair of the vehicle. R.S.O. 1970, c. 202, s. 6 (2).

Self-  
propelled  
implement  
of  
husbandry

(3) Upon the application of the owner of a motor vehicle or trailer and upon payment of the fee prescribed by the regulations, the Ministry or any person authorized by the Minister shall,

Issuance  
or validation  
of permits  
and number  
plates

- (a) issue for the motor vehicle or trailer a numbered permit and, except in the case where the permit is a CAVR cab card, a number plate or number plates, in accordance with the regulations, bearing the number of the permit; or
- (b) validate the permit issued for the motor vehicle or trailer and provide such evidence of the validation for display upon the motor vehicle or trailer as may be prescribed by the regulations. 1974, c. 66, s. 2 (1), *part*; 1980, c. 71, s. 2 (2).

(4) The Ministry shall maintain,

Records

- (a) a numerical index record of all permits issued and in force under this section; and
- (b) an alphabetical index record of the names and addresses of all persons to whom permits that are in force have been issued.

(5) A permit that is issued or validated is in force during the period of time prescribed by the regulations. 1974, c. 66, s. 2 (1), *part*.

Effective  
term of  
permit

Minister  
may refuse  
to issue  
or validate  
or may  
cancel  
permit  
R.S.O. 1980,  
c. 425

(6) The Minister may, in his discretion, refuse to issue or validate or may cancel any permit issued for any motor vehicle or trailer that is to be used or is used,

(a) as a public vehicle within the meaning of the *Public Vehicles Act*; or

R.S.O. 1980,  
c. 407

(b) as a public commercial vehicle within the meaning of the *Public Commercial Vehicles Act*,

unless the owner of such motor vehicle or trailer is in possession of an operating licence as required by such Acts. R.S.O. 1970, c. 202, s. 6 (4); 1973, c. 45, s. 2 (3); 1974, c. 66, s. 2 (2).

Minister  
may cancel  
or refuse  
to issue

(7) The Minister may, in his discretion, cancel or refuse to issue a permit, the fee for which is prorated under a reciprocity agreement or arrangement with another jurisdiction, where the owner or lessee has been convicted of an offence under section 16 or if in his opinion the owner or lessee is not entitled to reciprocity privileges under the Canadian Agreement on Vehicle Registration.

Notice of  
proposal

(8) Where the Minister proposes to cancel or refuse to issue a permit referred to in subsection (7), he shall notify the permit holder or applicant, as the case may be, of his proposal.

Show  
cause

(9) A person who has received a notification under subsection (8) may, within thirty days after receiving the notification, submit to the Minister such documents and records as may show cause why the Minister should not cancel or refuse to issue the permit.

Proceeding  
with  
proposal

(10) Upon the expiration of thirty days after the notification referred to in subsection (8) and consideration of any documents or records submitted under subsection (9), the Minister may carry out his proposal or refrain from carrying out his proposal. 1980, c. 71, s. 2 (3), *part*.

Local  
issuance  
of motor  
vehicle  
permits

(11) The Minister may give authority to any person to issue permits for motor vehicles or trailers and may define the duties and powers of such person, and, where the salary is not otherwise provided, may authorize and fix the fee to be retained by the person so authorized for each permit issued. R.S.O. 1970, c. 202, s. 6 (5); 1973, c. 45, s. 2 (4).

Permit  
documen-  
tation

(12) Prior to the issuance or validation of a permit under this section, the Minister may require production of such documentation as he considers necessary to enable him to determine whether a permit may be issued or validated and that

documentation may be different for different vehicles or classes of vehicles or in respect of the same vehicles or classes of vehicles used for different purposes. 1980, c. 71, s. 2 (3), *part.*

(13) Declarations or affidavits in connection with the issuance of permits and licences under this Act or required by the Ministry in that regard may be taken before any person having authority to administer oaths or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. R.S.O. 1970, c. 202, s. 6 (6); 1972, c. 1, s. 1.

Adminis-  
tration of  
declarations  
and  
affidavits

(14) The Lieutenant Governor in Council may make regulations respecting any matter ancillary to the provisions of this Part with respect to permits and number plates and in particular,

Regulations  
re permits  
and number  
plates

- (a) prescribing forms for the purposes of this section and requiring their use;
- (b) respecting the issuance and validation of permits and the issuance of number plates;
- (c) prescribing the period of time during which permits shall be in force that are issued or validated for motor vehicles or trailers or any class or type of either of them;
- (d) prescribing fees for the issuance, validation and replacement of permits and number plates and of evidence of validation of permits;
- (e) governing the method of validating permits and the form of and manner of affixing, displaying or showing evidence of the validation of permits on motor vehicles and trailers;
- (f) respecting permits and number plates for and the operation of motor vehicles or trailers owned by manufacturers or dealers and not kept by them for private use;
- (g) respecting MVIS number plates for motor vehicles while the vehicles are in the care and control of licensees as defined in section 71 and regulating the operation of the vehicles by the said licensees. 1974, c. 66, s. 2 (3); 1979, c. 103, s. 2.

(15) The Lieutenant Governor in Council may make regulations respecting the issuing of permits for motor vehicles

Regulations  
respecting  
single  
journey  
permits

or trailers that are to be driven, operated or drawn on highways for single journeys from specified points of commencement to specified destinations and prescribing fees to be paid therefor. 1973, c. 45, s. 2 (5).

Commence-  
ment of  
cl. (14) (g)

(16) Clause (14) (g) does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1979, c. 103, s. 9 (2), *part*.

Permit  
limitations

**8.**—(1) Where the fee prescribed by the regulations for a permit or validated permit for a motor vehicle is calculated with regard to specific limitations or restrictions on the use of a vehicle, the owner of the vehicle shall not drive or cause or permit the vehicle to be driven on a highway except in accordance with such limitations or restrictions.

Penalty

(2) Every person who contravenes the provisions of subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$200. 1980, c. 71, s. 3.

Penalty  
for false  
statement

**9.**—(1) Every person who knowingly makes a false statement in an application, declaration, affidavit or paper writing required by this Act or by the regulations or by the Ministry is guilty of an offence and on conviction, in addition to any other penalty or punishment to which he may be liable, is liable to a fine of not less than \$50 and not more than \$200 or to imprisonment for a term of not more than thirty days, or to both, and in addition his licence or permit may be suspended for a period of not more than six months. R.S.O. 1970, c. 202, s. 7 (1); 1972, c. 1, s. 1.

Change of  
address

(2) Where an owner changes his address as stated in an application for a permit or for the validation of a permit or in a previous notice sent or filed under this subsection, he shall within six days send by registered mail to or file with the Ministry notice of his new address. 1974, c. 66, s. 3 (1).

Where vehicle  
identification  
number  
obliterated

(3) No permit shall be issued for a motor vehicle or a trailer that has a gross weight exceeding 2,750 kilograms where the manufacturer's vehicle identification number or similar identifying mark has been obliterated or defaced until the owner has filed with the Ministry satisfactory proof of the ownership of the vehicle or trailer, and, if known, the reason for the obliteration or defacement, and, if satisfied as to the statements made, the Minister may grant permission to cut, impress, emboss or attach permanently to the vehicle or trailer a special identification number or mark, which thereafter shall be deemed sufficient for the purpose of the issuance, validation or transfer of a permit for the vehicle or trailer. R.S.O. 1970, c. 202, s. 7 (3); 1972, c. 1, s. 1; 1974, c. 66, s. 3 (2); 1978, c. 4, s. 2; 1980, c. 37, s. 3.

**10.**—(1) The owner of a motor vehicle shall not drive the motor vehicle or cause or permit it to be driven on a highway unless, Number plates

- (a) the number plate or number plates issued in accordance with the regulations and showing the number of a permit that is issued by the Ministry or a person authorized by the Minister and in force for the motor vehicle are displayed on the motor vehicle in the manner prescribed by the regulations; and
- (b) where the permit for the motor vehicle has been validated, there is affixed to the motor vehicle in the form and manner prescribed by the regulations evidence of the validation of the permit.

(2) The owner of a trailer shall not draw the trailer or cause or permit it to be drawn on a highway unless, Number plate on trailer

- (a) there is attached to and exposed on the back thereof a number plate furnished by the Ministry or a person authorized by the Minister showing in plain figures the number of a permit issued and in force for the trailer; and
- (b) where the permit for the trailer has been validated, there is affixed to the trailer in the form and manner prescribed by the regulations evidence of the validation of the permit. 1974, c. 66, s. 4.

(3) Subsection (1) does not apply to a motor vehicle if the permit therefor is a CAVR cab card. 1980, c. 71, s. 5. Where subs. (1) does not apply

**11.**—(1) Notwithstanding sections 7 and 10 and clause 12 (1) (d), a motor vehicle may be driven on a highway by a registrant carrying out a road test of the vehicle in the course of his duties as a registrant where an MVIS number plate issued by the Ministry or a person authorized by the Minister is displayed on the motor vehicle in the manner prescribed by the regulations. 1979, c. 103, s. 3. Road test

(2) Subsection (1) does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1979, c. 103, s. 9 (2), *part*. Commencement of subs. (1)

**12.**—(1) Every person who,

- (a) defaces or alters any number plate furnished by the Ministry;

Violations as to number plates

- (b) uses or permits the use of a defaced or altered number plate or a number plate issued by the Ministry for another motor vehicle or trailer;
- (c) without the authority of the owner, removes a number plate from a motor vehicle or trailer; or
- (d) uses or permits the use of any number plate upon a motor vehicle or trailer except the one issued by the Ministry for the motor vehicle or trailer,

is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500 or to imprisonment for not more than thirty days, or to both, and in addition his licence or permit may be suspended for not more than six months. R.S.O. 1970, c. 202, s. 9 (1); 1972, c. 1, s. 1; 1973, c. 45, s. 4 (1-3); 1974, c. 123, s. 2.

Notice of  
purchase of  
motor  
vehicle, etc.

(2) Every person shall, within six days, forward to the Ministry a notice on the prescribed form of the sale or purchase by or to him of a motor vehicle or trailer for which a permit has been issued. R.S.O. 1970, c. 202, s. 9 (2); 1972, c. 1, s. 1; 1973, c. 45, s. 4 (4).

Number  
plates  
property of  
Crown

(3) Every number plate furnished by the Ministry under this Act is the property of the Crown and shall be returned to the Ministry when required by the Ministry. R.S.O. 1970, c. 202, s. 9 (3); 1972, c. 1, s. 1.

No other  
numbers to  
be exposed

**13.**—(1) No number other than that upon the number plate furnished by the Ministry shall be exposed on any part of a motor vehicle or trailer in such a position or manner as to confuse the identity of the number plate. R.S.O. 1970, c. 202, s. 10 (1); 1972, c. 1, s. 1; 1973, c. 45, s. 5.

Numbers to  
be kept  
clean

(2) The number plates shall be kept free from dirt and obstruction and shall be so affixed that the numbers thereon may be plainly visible at all times, and the view thereof shall not be obscured or obstructed by spare tires, bumper bars, or by any part of the vehicle or any attachments thereto, or by the load carried.

Penalty

(3) Every person who contravenes any of the provisions of subsection (2) is guilty of an offence and on conviction is liable to a fine of not less than \$5 and not more than \$10. R.S.O. 1970, c. 202, s. 10 (2, 3).

Improper  
number  
plate

**14.**—(1) Where a peace officer has reason to believe that,

- (a) a number plate attached to a motor vehicle or trailer,
  - (i) was not furnished by the Ministry or a person authorized by the Minister for the motor vehicle or trailer, or
  - (ii) although furnished by the Ministry or a person authorized by the Minister for the motor vehicle or trailer, was obtained by false pretences; or
- (b) evidence that is displayed on a motor vehicle or trailer of the validation of a permit,
  - (i) was not furnished by the Ministry or a person authorized by the Minister in respect of the motor vehicle or trailer on which the evidence is displayed, or
  - (ii) although furnished by the Ministry or a person authorized by the Minister in respect of the motor vehicle or trailer on which the evidence is displayed, was obtained by false pretences,

the peace officer may take possession of the number plate attached to the motor vehicle or trailer and retain it until the facts as to the use or furnishing of the number plate or the evidence of validation of the permit for the motor vehicle or trailer have been determined. 1974, c. 66, s. 6.

(2) Where a peace officer has reason to believe that a CAVR cab card produced by a driver as being the permit for the motor vehicle,

Invalid  
cab card

- (a) was not furnished by the Ministry for that motor vehicle;  
or
- (b) has been cancelled by the Ministry,

the peace officer may take possession of the CAVR cab card and retain it until the facts in respect of the card have been determined. 1980, c. 71, s. 7.

**15.**—(1) Sections 7 and 10 and subsection 13 (1) do not apply to a motor vehicle owned by a person who does not reside or carry on business in Ontario for more than six consecutive months in each year if the owner thereof is a resident of some other province of Canada and has complied with the provisions of the law of the province in which he resides as to registration of a motor vehicle and the display of the registration number thereon, and provided

Exceptions  
as to  
residents  
of other  
provinces

the province of residence grants similar exemptions and privileges with respect to motor vehicles owned by residents of Ontario for which permits are issued and in force under this Act and the regulations. R.S.O. 1970, c. 202, s. 12 (1); 1974, c. 66, s. 7 (1).

Exemption  
from  
ss. 7, 10 for  
thirty days

(2) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 7 and 10 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law. 1978, c. 24, s. 1.

Exceptions  
as to  
residents  
of foreign  
countries

(3) Sections 7 and 10 and subsection 13 (1) do not apply to a motor vehicle owned by a person who does not reside or carry on business in Ontario for more than three months in any one year if the owner thereof is a resident of a country or state that grants similar exemptions and privileges with respect to motor vehicles owned by residents of Ontario for which permits are issued and in force under this Act and the regulations and has complied with the provisions of the law of the country or state in which he resides as to registration of a motor vehicle and the display of registration plates thereon, but this subsection does not apply to commercial motor vehicles. R.S.O. 1970, c. 202, s. 12 (2); 1974, c. 66, s. 7 (2).

Registration  
of vehicles  
of certain  
non-residents

(4) Notwithstanding subsections (1) and (3), sections 7 and 10 and subsection 13 (1) apply to a motor vehicle owned by a person who does not reside in Ontario that displays registration plates of a jurisdiction other than Ontario and that is,

(a) based and operated in Ontario by such person; or

(b) operated by a resident of Ontario for more than a thirty-day period in any calendar year. 1973, c. 45, s. 7.

Regulations

(5) The Lieutenant Governor in Council may make regulations providing for the temporary exemption from the provisions of sections 7 and 10 of commercial vehicles or vehicles used by non-residents doing business in Ontario. R.S.O. 1970, c. 202 s. 12 (3); 1974, c. 66, s. 7 (3).

Records  
to be kept

**16.**—(1) A person to whom a permit is issued for a prorated fee under a reciprocity agreement or arrangement with another jurisdiction shall maintain and preserve such records as are required by regulation during the period of validity of the permit and for the four years immediately following expiry thereof and shall submit such reports to the Ministry as are prescribed by the regulations within the prescribed times.

(2) A person to whom subsection (1) applies shall produce for inspection, within a reasonable time under the prevailing circumstances, the records required under subsection (1) upon the demand of an officer appointed by the Minister to carry out the provisions of this Part. Production of records

(3) An officer appointed by the Minister for carrying out the provisions of this Part may, at any reasonable time, enter the business premises of a person referred to in subsection (1) and examine those books, records and documents of that person that relate to his business of operating commercial vehicles. Examination of records

(4) Any person making an investigation under this section may, upon giving a receipt therefor, remove, for the purpose of making copies, any records produced under subsection (2) or examined under subsection (3) and when he does remove any records, the copies shall be made with reasonable dispatch and the records promptly returned. Removal of documents

(5) Any copy made under subsection (4) and certified to be a true copy by the person making the copy is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. Copies as evidence

(6) Every person who contravenes subsection (1) or (2) or obstructs, or interferes with an officer in the performance of his duties under subsection (3), is guilty of an offence and on conviction is liable to a fine of not more than \$200 or to imprisonment for a term of not more than six months, or to both. Penalty

(7) The Lieutenant Governor in Council may make regulations, Regulations

(a) prescribing the records to be kept by persons referred to in subsection (1);

(b) governing reports to be made to the Ministry by persons referred to in subsection (1). 1980, c. 71, s. 8, *part.*

**17.**—(1) Where the fee paid under subsection 7 (3) was pro-rated under a reciprocity agreement or arrangement with another jurisdiction and the appropriate fees are not paid within sixty days after the issue of the permit, the permit shall be deemed to be cancelled upon notice of the cancellation being given to the permit holder. Cancellation of permit

(2) Where the notice referred to in subsection (1) is sent by prepaid mail addressed to the person to whom the permit was issued at his latest address appearing on the records of the Ministry, notice shall be deemed to have been given on the fifth day after the day of mailing. 1980, c. 71, s. 8, *part.* Notice

## PART III

## LICENCES

## DRIVER, DRIVING INSTRUCTOR

Driver's  
licence

**18.**—(1) No person shall drive a motor vehicle on a highway unless the motor vehicle is within a class of motor vehicles in respect of which the person holds a driver's licence issued to him by the Minister.

Issuance of  
licence

(2) The Minister may issue a driver's licence to any person who meets the requirements of this Act and the regulations authorizing the person to drive on a highway,

- (a) any motor vehicle within a class or classes of motor vehicles;
- (b) subject to any conditions; and
- (c) for the period of time,

prescribed by the regulations and set out or referred to in the licence. 1973, c. 167, s. 4, *part*.

Driving in  
breach of  
condition  
prohibited

(3) No person shall drive a motor vehicle on a highway while contravening a condition contained in his driver's licence or imposed by the regulations. 1978, c. 90, s. 1.

Responsi-  
bility of  
owner of  
motor vehicle

(4) No person who is the owner or is in possession or control of a motor vehicle shall permit any person to drive the motor vehicle on a highway unless that person holds a driver's licence issued in respect of the class of motor vehicles to which the motor vehicle belongs.

Examina-  
tions

(5) An applicant for a driver's licence or a person who holds a driver's licence shall submit to such examinations as are authorized by the regulations relating to this section and required by the Minister at such times and places as the Minister may require and the Minister may,

- (a) in the case of an applicant for a driver's licence,
  - (i) issue the licence subject to such of the conditions authorized by the regulations and in respect of such class or classes of motor vehicles as in the opinion of the Minister are justified by the results of the examinations, or
  - (ii) where the applicant fails to submit to or to successfully complete the examinations, re-

fuse to issue a driver's licence to the applicant; or

(b) in the case of a person who holds a driver's licence,

(i) impose or remove such of the conditions authorized by the regulations or change the class or classes of motor vehicles in respect of which the licence is issued in accordance with the results of the examinations, or

(ii) where the person fails to submit to or to successfully complete the examinations, suspend or cancel the driver's licence held by the person. 1973, c. 167, s. 4, *part*.

(6) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry. 1978, c. 24, s. 2. Applicant for driver's licence may be photographed

(7) The Lieutenant Governor in Council may make regulations relating to this section, Regulations

(a) prescribing classes of motor vehicles;

(b) prescribing the term of validity of drivers' licences;

(c) prescribing conditions that shall apply to drivers' licences or any class or classes of drivers' licences;

(d) prescribing classes of drivers' licences;

(e) respecting practical and written driving examinations, and mental and physical, including ophthalmic and auditory, examinations for applicants for and holders of drivers' licences;

(f) prescribing the qualifications of applicants for and holders of drivers' licences or any class or classes of drivers' licences and authorizing the Minister to waive such qualifications as are specified in the regulations under the circumstances prescribed therein;

(g) respecting documents required to be filed with the Ministry prior to the issuance of a driver's licence or any class or classes of drivers' licences or as a condition of retention thereof by the holder of a driver's licence. 1973, c. 167, s. 4; 1974, c. 123, s. 3.

Documents  
privileged

(8) Documents filed with the Ministry relating to mental and physical, including ophthalmic and auditory, examinations pursuant to this section are privileged for the information of the Ministry only and shall not be open for public inspection. 1977, c. 54, s. 1.

Commence-  
ment of  
subs. (6)

(9) Subsection (6) does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1978, c. 24, s. 7 (1).

As to  
carrying  
licences and  
surrender  
on demand

**19.**—(1) Every driver of a motor vehicle shall carry his licence with him at all times while he is in charge of a motor vehicle and shall surrender the licence for reasonable inspection upon the demand of a constable or officer appointed for carrying out the provisions of this Act. 1979, c. 57, s. 2 (1).

Identifica-  
tion on  
failure to  
surrender  
licence

(2) Every person who is unable or refuses to surrender his licence in accordance with subsection (1) shall, when requested by a constable, give reasonable identification of himself and, for the purposes of this subsection, the correct name and address of such person shall be deemed to be reasonable identification. R.S.O. 1970, c. 202, s. 14 (2); 1979, c. 57, s. 2 (2).

Exemption  
as to non-  
residents

**20.**—(1) Section 18 and any regulation made thereunder do not apply to any person who is,

(a) a resident of any other province of Canada, who is at least sixteen years of age and has complied with the law of the province in which he resides as to the drivers of motor vehicles;

(b) a resident of any other country or state,

(i) who is at least sixteen years of age and is the holder of a valid International Driver's Permit, or

(ii) who is at least sixteen years of age and has not resided in Ontario for more than three months in any one year and has complied with the law of the country or state in which he resides as to the licensing of drivers of motor vehicles. R.S.O. 1970, c. 202, s. 15 (1); 1973, c. 167, s. 5 (1), *revised*.

Exemption  
of new  
residents

(2) Section 18 and any regulation made thereunder do not apply to a person for sixty days after he has become a resident of Ontario if during such period he holds a subsisting driver's licence in accordance with the laws of the

province, country or state of which he was a resident immediately before becoming a resident of Ontario. R.S.O. 1970, c. 202, s. 15 (2); 1973, c. 167, s. 5 (2); 1977, c. 54, s. 2.

**21.—**(1) No person shall,

Displaying  
licence  
which has  
been  
suspended,  
altered, etc.

- (a) display or cause or permit to be displayed or have in his possession any cancelled, revoked, suspended, fictitious or fraudulently obtained or altered driver's licence;
- (b) lend his driver's licence to any other person or permit the use of it by another person;
- (c) display or represent as his own any driver's licence not issued to him;
- (d) fail or refuse to surrender to the Ministry upon its demand any driver's licence that has been suspended, revoked or cancelled; or
- (e) apply for, secure or retain in his possession more than one driver's licence. 1974, c. 123, s. 4, *part*.

(2) Notwithstanding clause (1) (e), a person may hold a second driver's licence where the second licence is issued solely to permit the licensee to obtain experience in the driving of a motorcycle for the purpose of qualifying for a driver's licence that authorizes him to drive a motorcycle. 1976, c. 37, s. 2.

Second  
driver's  
licence  
permitted

**22.** A person whose driver's licence or privilege to drive a motor vehicle in Ontario has been suspended shall not drive a motor vehicle in Ontario under a driver's licence or permit issued by any other jurisdiction during such suspension. 1974, c. 123, s. 4, *part*.

Driving  
prohibited  
while  
licence  
suspended

**23.—**(1) No person under the age of sixteen years shall drive or operate a motor vehicle, road-building machine, self-propelled implement of husbandry or farm tractor on a highway.

Drivers  
under 16  
prohibited

(2) No person shall employ or permit anyone under the age of sixteen years to drive or operate a motor vehicle, road-building machine, self-propelled implement of husbandry or farm tractor on a highway.

Employment  
of drivers  
under 16  
prohibited

(3) Subsections (1) and (2) do not apply in respect of the driving or operating of a self-propelled implement of husbandry or farm tractor directly across a highway. 1977, c. 54, s. 3.

Exception

Motor  
assisted  
bicycle  
drivers  
under 16  
prohibited

**24.** No person under the age of sixteen years shall drive a motor assisted bicycle on a highway. 1974, c. 123, s. 5; 1975, c. 78, s. 2.

Prohibition  
as to letting  
or hiring

**25.**—(1) No person shall hire or let for hire a motor vehicle unless the person by whom the motor vehicle is to be driven is a person licensed to drive a motor vehicle as required by this Act.

Non-  
resident's  
licence

(2) Subsection (1) does not apply to a resident of any other province of Canada who does not reside or carry on business in Ontario for more than six consecutive months in any one year or to a resident of a country or state that grants similar exemptions and privileges to residents of Ontario, who does not reside in Ontario for more than three consecutive months in any one year, provided such person is the holder of a driver's licence issued by the province, country or state in which he resides.

Production  
of licence  
when hiring  
motor  
vehicle

(3) Every person, whether a resident of Ontario or not, hiring a motor vehicle shall produce his driver's licence for the inspection of the person from whom the vehicle is being hired. R.S.O. 1970, c. 202, s. 19.

Suspension  
on conviction  
for certain  
offences  
R.S.C. 1970,  
c. C-34

**26.**—(1) The driver's licence of a person who is convicted of an offence under section 203, 204 or 219 of the *Criminal Code* (Canada) committed by means of a motor vehicle as defined in this Act or of an offence under section 233, 234 or 236 of the *Criminal Code* (Canada) committed while driving or having the care or control of a motor vehicle as defined in this Act or of an offence under section 234.1 or 235 of the *Criminal Code* (Canada) committed in relation to the driving or care or control of a motor vehicle as defined in this Act is thereupon and hereby suspended for a period of,

(a) upon the first conviction, three months;

(b) upon the first subsequent conviction, six months;  
and

(c) upon an additional subsequent conviction, three  
years,

provided that where an order has been made before the 26th day of April, 1976 under subsection 238 (1) of the *Criminal Code* (Canada) prohibiting a person from driving a motor vehicle for any longer period, the licence shall remain suspended during such longer period. 1977, c. 54, s. 4; 1978, c. 90, s. 2 (1).

(2) Where a person who has previously been convicted of an offence mentioned in subsection (1) is convicted of the same or any other offence mentioned in subsection (1) within five years after the date of the previous conviction, the offence for which he is last convicted shall be deemed to be a subsequent offence for the purposes of clauses (1) (b) and (c). 1976, c. 37, s. 3, *part*; 1978, c. 90, s. 2 (2).

Subsequent  
offence  
within five-  
year period

(3) Where the court or judge, as the case may be, making the conviction referred to in subsection (1) considers it to be desirable for the protection of the public using the highways, the court or judge may make an order extending the suspension of the licence,

Order  
extending  
suspension

(a) for any period in addition to the period specified in subsection (1) that the court or judge considers proper, if the person is liable to imprisonment for life in respect of the offence; or

(b) for any period in addition to the period specified in subsection (1) that the court or judge considers proper but not exceeding three years, if the person is not liable to imprisonment for life in respect of the offence.

(4) Where a person pleads guilty to or is found guilty of an offence referred to in subsection (1) and an order directing that the accused be discharged is made under section 234, 236 or 662.1 of the *Criminal Code* (Canada), this section applies in the same manner as if the person were convicted of the offence.

Order for  
discharge

R.S.C. 1970,  
c. C-34

(5) An appeal may be taken from an order for additional suspension made under subsection (3) and the provisions of the *Criminal Code* (Canada) applying to an appeal from the conviction referred to in subsection (1) apply in respect of an appeal from an order made under subsection (3).

Appeal

(6) Where an appeal is taken under subsection (5), the court being appealed to may direct that the order being appealed from shall be stayed pending the final disposition of the appeal or until otherwise ordered by that court. 1976, c. 37, s. 3, *part*.

Stay of  
order on  
appeal

**27.**—(1) The licence of a person who is convicted of an offence under subsection 238 (3) of the *Criminal Code* (Canada) is thereupon and hereby suspended for a period of six months in addition to any other period for which the licence is suspended, and consecutively thereto.

Suspension  
for driving  
while dis-  
qualified

(2) Where a person pleads guilty to or is found guilty of an offence referred to in subsection (1) and an order directing that the accused be discharged is made under section 662.1 of the *Criminal*

Order for  
discharge

*Code* (Canada), this section applies in the same manner as if the person were convicted of the offence. 1976, c. 37, s. 4.

When  
driver  
may be  
disqualified

**28.** A provincial judge or justice of the peace by whom a person is convicted of a contravention of this Act, if the person convicted is required to hold a driver's licence and does not hold such licence, may declare him disqualified to hold such a licence for such time as the provincial judge or justice of the peace thinks fit and shall so report with the certificate of the conviction to the Minister. R.S.O. 1970, c. 202, s. 26.

Interpre-  
tation

**29.—(1)** In this section, "justice" means a justice of the peace or a provincial judge.

Suspension  
for default  
in payment  
of fine  
R.S.O. 1980,  
cc. 425, 407,  
400

(2) Where a justice is satisfied that a person is in default of payment of all or any part of a fine imposed upon conviction for an offence against this Act, the *Public Vehicles Act*, the *Public Commercial Vehicles Act* or the regulations made under any of them, he may, in addition to any other order which may have been made under the *Provincial Offences Act*, issue an order to the Registrar directing the suspension of the driver's licence of such person and the Registrar shall suspend the licence.

Suspension

(3) A driver's licence that is suspended under this section shall remain suspended and shall not be renewed, nor shall a new licence be issued to the person whose licence has been suspended, until payment in full is made of the amount in respect of which the order directing suspension was issued and the licence is reinstated pursuant to subsection (4).

Removal of  
suspension

(4) Upon payment in full of the amount in respect of which an order directing suspension was issued, a justice of the court from which the order was issued shall issue an order to the Registrar directing the reinstatement of the driver's licence and the Registrar shall reinstate the licence.

Regulations

(5) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section. 1972, c. 128, s. 1.

Power to  
cancel  
permit or  
licence and  
to prohibit  
driving

**30.—(1)** The Registrar may, at any time for misconduct or contravention of the provisions of this Act, the *Public Vehicles Act* or the *Public Commercial Vehicles Act* or of any regulation thereunder by an owner or driver of a motor vehicle or for any reason that he may consider sufficient, suspend or cancel any permit or licence, and no further or other licence or permit shall be issued to such owner or driver during such suspension or, in the case of a cancellation, until the Registrar approves, and the Registrar may also for such misconduct or contravention or reason prohibit any

person from driving a motor vehicle for such period as he may consider advisable and every such person who drives a motor vehicle during the prohibited period is liable to a fine of not more than \$500.

(2) Every person whose permit has been suspended or cancelled and who, while prohibited from having a motor vehicle registered in his name, applies for or procures the issue to him or has in his possession a permit issued to him is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 and to imprisonment for a term of not more than thirty days. Unlawful possession of permit

(3) Every person whose licence has been suspended or cancelled and who, while prohibited from driving a motor vehicle, applies for or procures the issue to him or has in his possession a licence is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 and to imprisonment for a term of not more than thirty days. R.S.O. 1970, c. 202, s. 27. Unlawful possession of licence

(4) The Registrar may, at any time for misconduct or contravention of the provisions of this Act, the *Public Vehicles Act* or the *Public Commercial Vehicles Act* or of any regulation thereunder by an owner or lessee of one or more motor vehicles or trailers for which permits have been issued by a jurisdiction or jurisdictions other than the Province of Ontario, order that the permit and number plates issued for such vehicle or vehicles be seized and any constable or any officer appointed for carrying out the provisions of this Act or the enforcement of the *Public Vehicles Act* or the *Public Commercial Vehicles Act* may seize the permit and number plates and deliver them to the Ministry which shall return them to the authority that issued them. 1978, c. 16, s. 1. Power to seize out-of-province permits and plates

**31.**—(1) The board known as the Licence Suspension Appeal Board is continued and shall consist of three or more members appointed by the Lieutenant Governor in Council, and one of them shall be designated as chairman. Licence Suspension Appeal Board

(2) The members of the Board shall be paid such remuneration as is determined by the Lieutenant Governor in Council. Remuneration

(3) The Lieutenant Governor in Council may make regulations prescribing the duties of the Board, the fees to be paid on applications and the rules of practice and procedure applicable to procedures before the Board. R.S.O. 1970, c. 202, s. 28. Regulations

## Appeal

**32.**—(1) Every person aggrieved by a decision of the Minister under subclause 18 (5) (b) (i) or a decision of the Registrar under section 30 may appeal the decision to The Licence Suspension Appeal Board.

## Powers of Board

(2) The Board may confirm, modify or set aside the decision of the Minister or Registrar. 1980, c. 71, s. 9.

## Appeal to county judge

(3) Every person who deems himself aggrieved by a decision of the Board may, within thirty days after a notice of the decision is sent to his latest address as recorded with the Board, appeal the decision of the Board to a judge of the county or district court of the county or district in which the person resides.

## Powers of judge

(4) The judge may confirm, modify or set aside the decision of the Board.

## Application of s. 37

(5) Section 37 does not apply to the suspension or cancellation of a licence or permit under section 30. R.S.O. 1970, c. 202, s. 29 (3-5).

## Penalty for operating motor vehicle when permit suspended or cancelled

**33.** Every person who drives a motor vehicle the permit for which is under suspension or has been cancelled is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 202, s. 30.

## Service

**34.** Notice to a person of the suspension of his driver's licence is sufficiently given if delivered personally or sent by registered mail addressed to the person to whom the licence was issued at the latest current address of the person appearing on the records of the Ministry and where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice. 1974, c. 123, s. 10, *part*.

## Driving while driver's licence suspended

**35.** Every person who drives a motor vehicle on a highway when his driver's licence is suspended by operation of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500 and to the suspension of his driver's licence for a period of six months in addition to the period of suspension with respect to which he is convicted under this section. 1974, c. 123, s. 10, *part*.

## Where person whose permit or licence suspended does not hold permit or licence

**36.** Where by or under the provisions of this Act or the regulations a permit or licence is suspended and the person to whom the suspension applies is not the holder of a permit or licence, as the case may be, such person shall be deemed for all the purposes of

this Act or the regulations to be a person whose permit or licence, as the case may be, has been suspended. R.S.O. 1970, c. 202, s. 31; 1979, c. 103, s. 4.

**37.** If a person whose licence has been suspended enters an appeal against his conviction and serves notice of the appeal on the Registrar, the suspension does not apply from the time notice is served on the Registrar unless the conviction is sustained on appeal. 1977, c. 54, s. 5.

**38.** The Lieutenant Governor in Council may make regulations providing for a demerit point system for drivers of motor vehicles and under such system may provide for the cancellation and suspension of licences and may require the attendance of any driver before any official of the Ministry to show cause why his licence should not be cancelled or suspended. R.S.O. 1970, c. 202, s. 33; 1972, c. 1, s. 1.

**39.** The Lieutenant Governor in Council may make regulations in respect of probationary drivers,

- (a) defining probationary drivers;
- (b) prescribing the period or periods during which a person shall be classed as a probationary driver;
- (c) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;
- (d) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;
- (e) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister;
- (f) prescribing modifications to the demerit point system prescribed under section 38 in so far as it applies to probationary drivers and exempting probationary drivers from any of the provisions of the said demerit point system. 1978, c. 24, s. 3; 1979, c. 103, s. 5.

**40.—(1)** In this section, "driving instructor" means a person who teaches persons to operate motor vehicles and receives compensation therefor.

## Regulations

(2) The Lieutenant Governor in Council may make regulations licensing, regulating and governing driving instructors and the teaching of persons to operate motor vehicles.

## Conflict between section and by-law

(3) Where there is a conflict between this section and the regulations and a by-law of a municipal council or board of police commissioners regulating or governing driving instructors, this section and the regulations prevail. R.S.O. 1970, c. 202, s. 34.

## PART IV

## GARAGE AND STORAGE LICENCES

## Licence respecting dealing in motor vehicles, etc.

41.—(1) No person shall deal in motor vehicles or trailers, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business. 1978, c. 24, s. 4 (1); 1980, c. 71, s. 10 (1).

## Fee

(2) The fee for the licence shall be such as may be fixed from time to time by the Lieutenant Governor in Council on the recommendation of the Minister. R.S.O. 1970, c. 202, s. 35 (2).

## Penalty

(3) Every person who deals in motor vehicles or trailers or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$500. 1978, c. 24, s. 4 (2); 1980, c. 71, s. 10 (2).

## Right of entry and inspection

(4) Any constable or any officer appointed for carrying out the provisions of this Part may enter into any place where motor vehicles, trailers or bicycles are stored or dealt in, or into any garage, repair shop, used car lot or premises used for the wrecking or dismantling of vehicles, and make such investigation and inspection as he thinks proper for the purposes of this Part. 1978, c. 24, s. 4 (3); 1980, c. 71, s. 10 (3).

## Penalty for interference with constable

(5) Every person who obstructs, molests or interferes with any constable or officer in the performance of his duties under subsection (4) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$200 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 202, s. 35 (5).

## Suspension or cancellation of licence by Minister

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles or trailers, operating a used car lot, or for wrecking or dismantling vehicles, for misconduct or for non-

compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient. 1978, c. 24, s. 4 (4); 1980, c. 71, s. 10 (4).

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles or trailers, operating a garage, repair shop or used car lot, or the wrecking or dismantling of vehicles. 1978, c. 24, s. 4 (5); 1980, c. 71, s. 10 (5). Regulations

(8) In this section, "motor vehicle" does not include a motor assisted bicycle. 1975, c. 78, s. 3. Interpretation

**42.—**(1) Every person who buys, sells, wrecks or otherwise deals in second-hand motor vehicles, trailers or bicycles shall keep a complete record of all motor vehicles, trailers and bicycles bought, sold or wrecked and of such information as will enable the motor vehicles, trailers and bicycles to be readily identified, and shall transmit to the Ministry, within six days after the event, on forms furnished by the Ministry, a statement of each motor vehicle or trailer bought, sold or wrecked by him and such information with reference thereto as may be required by the Ministry. 1980, c. 71, s. 11. Record of second-hand vehicles bought, sold, etc.

(2) No person shall buy, sell, wreck or otherwise deal with any motor vehicle or bicycle or a trailer that has a gross weight exceeding 2,750 kilograms where the manufacturer's vehicle identification number or similar identifying mark has been obliterated or defaced or is not readily recognizable. R.S.O. 1970, c. 202, s. 36 (2); 1978, c. 4, s. 3 (1); 1980, c. 37, s. 4 (1). Prohibition as to buying where number obliterated

(3) No person shall deface or remove the manufacturer's vehicle identification number or identifying mark from a motor vehicle or from the engine thereof or from a bicycle or from a trailer that has a gross weight exceeding 2,750 kilograms. R.S.O. 1970, c. 202, s. 36 (3); 1978, c. 4, s. 3 (2); 1980, c. 37, s. 4 (2). Defacing vehicle identification

(4) Where any motor vehicle is placed in the possession of a person who repairs, buys, sells, wrecks or stores motor vehicles or conducts what is known as a garage business, parking station, parking lot or used car lot and the same remains in his possession for more than two weeks without good reason, such person shall forthwith, upon the expiration of such period of two weeks, make a report thereof to the Ministry. R.S.O. 1970, c. 202, s. 36 (4); 1972, c. 1, s. 1. Report to Ministry as to cars stored or parked

(5) If a motor vehicle that shows evidence of having been involved in a serious accident or having been struck by a bullet is brought into a garage, parking station, parking lot, used car lot or repair shop, the person in charge of the Report as to damaged or bullet-marked cars

garage, parking station, parking lot, used car lot or repair shop shall forthwith report the same to the nearest provincial or municipal police officer, giving the name and address of the owner or operator and also the permit number and a description of the vehicle.

Penalty

(6) Every person who contravenes any of the provisions of,

- (a) subsection (1) or (4) is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$50;
- (b) subsection (2), (3) or (5) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$200 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1970, c. 202, s. 36 (5, 6).

## PART V

### EQUIPMENT

Interpre-  
tation

#### 43. In this Part,

R.S.O. 1980,  
c. 20

- (a) "ambulance" includes an ambulance as defined in the *Ambulance Act* and a cardiac arrest emergency vehicle operated by or under the authority of a hospital;
- (b) "fire department vehicle" includes an emergency crash extrication vehicle owned and operated by a rescue organization approved by the Minister in writing for the purposes of this Part;
- (c) "motor vehicle" does not include a motor assisted bicycle. 1979, c. 103, s. 6.

Lamps  
required  
on all  
motor  
vehicles  
except  
motor-  
cycles

44.—(1) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every motor vehicle other than a motorcycle shall carry three lighted lamps in a conspicuous position, one on each side of the front of the vehicle which shall display a white or amber light only, and one on the rear of the vehicle which shall display a red light only. 1976, c. 37, s. 5 (1), *part*; 1978, c. 4, s. 4 (1).

Lamps  
required  
on motor-  
cycles

(2) Subject to subsection (3), when on a highway at any time every motorcycle shall carry two lighted lamps in a conspicuous position, one on the front of the vehicle which shall display a white light only, and one on the rear of the vehicle which shall display a red light only.

(3) When on a highway at any time every motorcycle <sup>Idem</sup> with a side car shall carry a lighted lamp in a conspicuous position on each side of the front of the vehicle which lamps shall display a white or amber light only and a lighted lamp on the rear of the vehicle which shall display a red light only. 1976, c. 37, s. 5 (1), *part*.

(4) Any lamp required under subsection (1), (2) or (3) shall, when lighted, be clearly visible at a distance of at least 150 metres from the front or rear, as the case may be. 1976, c. 37, s. 5 (1), *part*; 1978, c. 4, s. 4 (2). <sup>Light requirement</sup>

(5) Notwithstanding subsections (2) and (3), where a motorcycle that was manufactured prior to the 1st day of January, 1970, is operated on a highway, the lighted lamps required under subsections (2) and (3) shall be required only during the period from one-half hour after sunset to one-half hour before sunrise, or at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less. 1976, c. 37, s. 5 (1), *part*; 1978, c. 4, s. 4 (3). <sup>Exception</sup>

(6) Lamps on the front of a motor vehicle shall be so constructed, located, arranged and adjusted that when lighted as required by subsections (1), (2) and (3) they produce under normal atmospheric conditions and on a level road a driving light sufficient to render clearly discernible to the operator of the motor vehicle any person or vehicle on the highway within a distance of 110 metres ahead of the motor vehicle. R.S.O. 1970, c. 202, s. 37 (3); 1977, c. 54, s. 6; 1978, c. 4, s. 4 (5). <sup>Strength of lamps</sup>

(7) No person shall drive upon a highway a motor vehicle where either or both of the lamps that are required on the front of the vehicle by subsections (1), (2) and (3) are coated or covered with a coloured material or lacquer or where either or both of the lamps have been modified by the attachment to the lamps or the motor vehicle of any device that reduces the effective area of the lenses or the intensity of the beam of the lamps. 1973, c. 45, s. 14 (1), *part*. <sup>Covering or coating of lamps prohibited</sup>

(8) Subsection (6) does not apply to a motor vehicle parked on a highway and subsections (1), (2), (3), (10), (11), (13), (23), (24), (26) and (27) do not apply to a vehicle parked on a highway upon which the speed limit is not greater than 50 kilometres per hour and which is so lighted by the means of any system of street or highway lighting that the vehicle is clearly discernible within a distance of sixty metres. R.S.O. 1970, c. 202, s. 37 (4); 1976, c. 37, s. 5 (2); 1978, c. 4, s. 4 (6). <sup>Lighted streets</sup>

Strength of  
front lamps

(9) No motor vehicle shall carry on the front thereof more than four lighted lamps that project a beam having an intensity of over 300 candela. R.S.O. 1970, c. 202, s. 37 (5); 1978, c. 4, s. 4 (7).

Clearance  
lamps  
required  
on wide  
vehicles

(10) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less,

- (a) every commercial motor vehicle and trailer having a width at any part in excess of 2.05 metres, other than a truck tractor, shall carry, in addition to the lamps required by subsection (1), two lighted clearance lamps, one on each side of the front of the vehicle, which shall display an amber light, and two lighted clearance lamps, one on each side of the rear of the vehicle, which shall display a red light; or
- (b) every truck tractor having a width at any part in excess of 2.05 metres shall carry, in addition to the lamps required by subsection (1), two lighted clearance lamps, one on each side of the front of the vehicle, which shall display an amber light, and one lighted clearance lamp on the left side of the rear of the vehicle, which shall display a red light,

and the Ministry may by regulation permit a reflector, approved by the Ministry, to be displayed in lieu of clearance lamps on the rear of the vehicle, and all such lamps shall be affixed so as to indicate the overall width of the vehicle. R.S.O. 1970, c. 202, s. 37 (6); 1972, c. 1, s. 1; 1976, c. 37, s. 5 (3); 1978, c. 4, s. 4 (8); 1980, c. 37, s. 5 (2).

Identification  
lamps

(11) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every commercial motor vehicle or combination of a commercial motor vehicle and a trailer having a length in excess of 9.2 metres or a width in excess of 2.05 metres shall carry three lighted lamps displaying green or amber lights at the front, except in the case of a public vehicle which shall display amber lights at the front, and three lighted lamps displaying red lights at the rear, and the lights of each colour shall be evenly placed not less than 150 millimetres nor more than 310 millimetres apart along a horizontal line as near the top of the commercial motor vehicle or combination of a com-

mercial motor vehicle and a trailer as the permanent structure permits, and shall be visible for distances of 150 metres from the front and rear respectively of the commercial motor vehicle or combination of a commercial motor vehicle and a trailer. R.S.O. 1970, c. 202, s. 37 (9); 1978, c. 4, s. 4 (10); 1978, c. 90, s. 3 (1).

(12) Notwithstanding subsection (11), a truck tractor driver on a highway without a trailer or semi-trailer is not required to carry the three red lamps displaying red lights to the rear. R.S.O. 1970, c. 202, s. 37 (10). Rear  
identification  
lamps on  
tractor  
without  
trailer

(13) When on a highway at any time from one-half hour after sunset to one half-hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every motor vehicle or combination of vehicles having a length in excess of 6.1 metres shall carry not fewer than four lighted side marker lamps, one of which shall be located on each side of the vehicle or combination of vehicles near the front and shall display a green or amber light and one of which shall be located on each side of the vehicle or combination of vehicles near the rear and shall display a red light and each of which lights shall be visible for a distance of 150 metres from the side of the vehicle or combination of vehicles upon which it is located; provided that a vehicle or combination of vehicles may carry four reflectors approved by the Ministry in lieu of the side marker lamps required by this section; and provided further that, if the clearance lamps upon the left side of any vehicle or combination of vehicles display lights visible for a distance of 150 metres from the left side of the vehicle or combination of vehicles, it is not necessary to carry side marker lamps as required by this subsection on the left side of the vehicle. R.S.O. 1970, c. 202, s. 37 (11); 1972, c. 1, s. 1; 1978, c. 4, s. 4 (11); 1978, c. 90, s. 3 (2). Side marker  
lamps

(14) Subject to subsection (15), no person shall use a lamp, other than the vehicular hazard warning signal lamps commonly known as four way flashers, that produces intermittent flashes of red light. 1973, c. 45, s. 14 (1), *part*. Intermittent  
red light  
restricted

(15) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, the *Public Vehicles Act* or the *Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may Red light  
in front

R.S.O. 1980,  
cc. 425, 407

carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. 1978, c. 24, s. 5.

Vehicles of  
volunteer  
fire fighters  
R.S.O. 1980,  
c. 164

(16) A volunteer fire fighter under the *Fire Departments Act* may carry on the left front fender of his motor vehicle a lamp not exceeding 102 millimetres in diameter displaying an amber and a white flashing light showing the letters "V.F.F.", which lamp shall be illuminated only when such motor vehicle is proceeding to a fire or other emergency, and no other motor vehicle shall carry any such lamp. R.S.O. 1970, c. 202, s. 37 (13); 1978, c. 4, s. 4 (12).

Motor  
assisted  
bicycles,  
bicycles and  
tricycles,  
lights on,  
etc.

(17) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every motor assisted bicycle, bicycle or tricycle shall carry on the front thereof a lighted lamp displaying a white or amber light and on the rear thereof a lighted lamp displaying a red light or a reflector approved by the Ministry, and in addition there shall be placed on the front forks thereof white reflective material, and on the rear thereof red reflective material covering a surface of not less than 250 millimetres in length and 25 millimetres in width. R.S.O. 1970, c. 202, s. 37 (14); 1972, c. 1, s. 1; 1974, c. 123, s. 11 (1); 1978, c. 4, s. 4 (13).

Penalty

(18) Every person who contravenes subsection (17) is guilty of an offence and on conviction is liable to a fine of not more than \$5. R.S.O. 1970, c. 202, s. 37 (15).

Rear lamps  
to illuminate  
number plate

(19) The lamp on the rear of a motor vehicle or trailer shall be of at least three candela and shall be so placed that it will, at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, illuminate the numbers on the number plate, or, if provision is made on the number plate or on any attachment furnished or required by the Ministry for affixing such lamp, it shall be affixed in the position or space provided, and such lamp shall face to the rear and reflect on the number plate a white light only. R.S.O. 1970, c. 202, s. 37 (16); 1972, c. 1, s. 1; 1978, c. 4, s. 4 (14).

(20) A motor vehicle, other than a commercial motor vehicle, while standing upon a highway at such times as lights are required by this section for the vehicle may, in lieu of the lighting equipment specified in this section, show one light carried on the left side of the vehicle in such a manner as to be clearly visible to the front and rear for a distance of at least sixty metres and to show white to the front and red to the rear of the vehicle; provided that such light shall not be displayed while the motor vehicle is in motion. R.S.O. 1970, c. 202, s. 37 (17); 1978, c. 4, s. 4 (15). Parking  
lights

(21) The Lieutenant Governor in Council may make regulations, Regulations  
as to lights  
on vehicles

- (a) prescribing the type and maximum strength of lights that shall be carried by vehicles, and regulating the location, direction, focus and use of such lights;
- (b) regulating or prohibiting the use of lights on vehicles that automatically produce intermittent flashes of light. R.S.O. 1970, c. 202, s. 37 (18).

(22) No motor vehicle, other than a public utility emergency vehicle, shall be equipped with more than one spotlight and every lighted spotlight shall be so directed, upon approaching or upon the approach of another vehicle, that no part of the high intensity portion of the beam from such lamp will be directed to the left of the prolongation of the extreme left side, nor more than thirty metres ahead, of the vehicle to which it is attached. R.S.O. 1970, c. 202, s. 37 (19); 1978, c. 4, s. 4 (16); 1980, c. 37, s. 5 (5). Spotlamps

(23) Every traction engine shall, at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, carry a lighted lamp in a conspicuous place in front, which shall display a white or green light only, and one on the rear of the engine or of any vehicle that may be attached to it, which shall display a red light only. R.S.O. 1970, c. 202, s. 37 (20); 1978, c. 4, s. 4 (17). Lamps to  
be carried  
on engine

(24) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every trailer and every object or contrivance drawn by a vehicle shall carry on the rear thereof one lighted lamp, which shall display a red light only. R.S.O. 1970, c. 202, s. 37 (21); 1978, c. 4, s. 4 (18). Lamps  
required  
on rear of  
trailer, etc.

Lights on  
vehicles,  
objects and  
contrivances  
over  
2.6 metres  
in width

(25) When on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every vehicle, and every object or contrivance drawn by a vehicle, having a width at any part in excess of 2.6 metres, shall carry at the rear two lighted lamps displaying red lights or two red reflectors, one of which shall be affixed as nearly as possible to the extreme left side and one as nearly as possible to the extreme right side of the vehicle, and such lamps or reflectors shall be clearly visible at a distance of at least 150 metres from the rear of the vehicle. R.S.O. 1970, c. 202, s. 37 (22); 1978, c. 4, s. 4 (19).

Lamps on  
all vehicles,  
except motor  
vehicles,  
etc.

(26) Subject to subsection (28), every vehicle, other than a motor vehicle, motor assisted bicycle, bicycle, tricycle or a vehicle referred to in subsection (24), (25) or (27), when on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, shall carry in a conspicuous position on the left side thereof a lighted lamp which shall display a white light to the front and a red light to the rear or a lighted lamp which shall display a white light to the front and a lighted lamp which shall display a red light to the rear, and any lamp so used shall be clearly visible at a distance of at least 150 metres from the front and the rear of the vehicle, as the case may be. R.S.O. 1970, c. 202, s. 37 (23); 1974, c. 123, s. 11 (2); 1978, c. 4, s. 4 (20).

Lights on  
farm  
tractors

(27) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system, when on a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, shall carry the lighted lamps required for motor vehicles under subsection (1). R.S.O. 1970, c. 202, s. 37 (24); 1978, c. 4, s. 4 (21).

Reflectors  
in certain  
cases

(28) The Ministry may by regulation permit a reflector approved by the Ministry to be displayed in lieu of a lighted lamp on vehicles commonly used for conveying flammable materials or vehicles that are structurally unsuitable for carrying lighted lamps. R.S.O. 1970, c. 202, s. 37 (25); 1972, c. 1, s. 1.

(29) Every motor vehicle or combination of motor vehicle and trailer having a width at any part in excess of 2.05 metres or having a length in excess of 6.1 metres shall be equipped with mechanical or electrical signalling devices that comply with subsections 122 (5) and (7). R.S.O. 1970, c. 202, s. 37 (28); 1978, c. 4, s. 4 (22).

Signalling  
devices  
required on  
trucks,  
buses, etc.

(30) Where any light is required by any provision of this Act to be visible for a specified distance, such requirement shall be deemed to apply during the times indicated in such provision upon level ground and under normal atmospheric conditions. R.S.O. 1970, c. 202, s. 37 (29).

Visibility  
of lights

(31) No person shall operate on a highway a motor vehicle or road-building machine while being used for the removal of snow from a highway unless the motor vehicle or road-building machine is equipped with a lamp producing intermittent flashes of blue light visible for a distance of 150 metres. R.S.O. 1970, c. 202, s. 37 (30); 1978, c. 4, s. 4 (23).

Flashing  
blue light  
on snow-  
removal  
equipment

(32) No person shall use a lamp that automatically produces intermittent flashes of blue light on a motor vehicle or road-building machine other than a motor vehicle or road-building machine while being used for the removal of snow from a highway. R.S.O. 1970, c. 202, s. 37 (31).

Restriction  
on use of  
flashing  
blue light

**45.** Every vehicle that is equipped with a right hand drive shall, unless it is equipped with a mechanical or electrical signal device as described in subsection 122 (5), have prominently displayed on the rear thereof, in bold face letters of not less than 50 millimetres in height and of a colour which is in contrast to that of the vehicle, the words,

Vehicles  
with right  
hand drive

“RIGHT HAND DRIVE VEHICLE”.

R.S.O. 1970, c. 202, s. 38; 1978, c. 4, s. 5.

**46.—**(1) Every motor vehicle, other than a motorcycle, when driven on a highway shall be equipped with at least two braking systems, each with a separate means of application and effective on at least two wheels, one of which shall be adequate to stop the vehicle as required by regulations made by the Ministry and the other of which shall be adequate to hold the vehicle stationary. R.S.O. 1970, c. 202, s. 39 (1); 1972, c. 1, s. 1.

Brakes, two  
systems  
required

(2) Every motorcycle or motor assisted bicycle when being driven on a highway shall be equipped with at least

Motorcycle  
or motor  
assisted  
bicycle

two braking systems each with a separate means of application with one effective on the front wheel and one effective on the rear wheel. R.S.O. 1970, c. 202, s. 39 (2); 1974, c. 123, s. 12.

Trailer or  
semi-trailer

(3) Every trailer or semi-trailer having a gross weight of 1,360 kilograms or more shall be equipped with brakes adequate to stop and to hold the vehicle. R.S.O. 1970, c. 202, s. 39 (3); 1978, c. 4, s. 6.

Additional  
brakes

(4) The Lieutenant Governor in Council may make regulations,

(a) requiring vehicles or any type or class thereof to be equipped with brakes or braking systems in addition to the brakes required by subsection (1), (2) or (3); and

(b) prescribing the standards and specifications of brakes and braking systems or any class or type thereof that are required by this section or regulations made under clause (a).

Condition  
of brakes

(5) All such brakes and braking systems shall be maintained in good working order and shall conform to the regulations made under this section.

Inspection

(6) Any constable or any officer appointed for carrying out the provisions of this Act may at any time inspect or cause an inspection to be made of the brakes and braking systems on any vehicle on the highway, and may, if the brakes or braking systems do not conform to the regulations made under this section, require the driver of the vehicle to proceed forthwith to make or have such brakes and braking systems made to comply with such regulations. R.S.O. 1970, c. 202, s. 39 (4-6).

Brake  
fluid

**47.**—(1) No person shall sell or offer for sale hydraulic brake fluid, for use in vehicles upon a highway, that does not comply with the standards and specifications prescribed by the regulations or in containers not marked in compliance with the regulations.

Regulations

(2) The Lieutenant Governor in Council may make regulations,

(a) prescribing the standards and specifications of hydraulic brake fluid or any type or class thereof for use in vehicles;

- (b) providing for the identification and labelling of containers used for hydraulic brake fluid or any type or class thereof.

(3) Any regulation may adopt by reference, in whole or in part with such changes as the Lieutenant Governor in Council considers necessary, any code of standards or specifications of hydraulic brake fluid. Adoption of codes by reference

(4) Every person who contravenes any of the provisions of this section or any regulation made under this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 202, s. 40. Penalty

**48.**—(1) Every motor vehicle other than a motorcycle shall be equipped with, Windshield wiper, mirror

- (a) a device for cleaning rain, snow and other moisture from the windshield so constructed as to be controlled or operated by the driver;

- (b) a mirror or mirrors securely attached to the vehicle and placed in such a position as to afford the driver a clearly reflected view of the roadway in the rear, or of any vehicle approaching from the rear.

(2) Every motor vehicle and every trailer shall be equipped with mudguards or fenders or other device adequate to reduce effectively the wheel spray or splash of water from the roadway to the rear thereof, unless adequate protection is afforded by the body of the motor vehicle or trailer or by a trailer drawn by the motor vehicle. Mudguards

(3) Subsection (2) does not apply to motor vehicles or trailers in an unfinished condition while proceeding to a works for completion. Exception

(4) Every motor vehicle other than a motorcycle shall be equipped with an odometer in good working order. R.S.O. 1970, c. 202, s. 41. Odometers

**49.** No person shall drive upon a highway a motor vehicle, other than a commercial motor vehicle, that has attached thereto any mirror or mirrors that extend more than 305 millimetres from the side of the vehicle, except when the motor vehicle is towing another vehicle. 1977, c. 54, s. 7; 1978, c. 4, s. 7. Extended mirrors

**50.** Every bus when driven on a highway shall be equipped with a speedometer which shall be maintained in good working order. R.S.O. 1970, c. 202, s. 42. Speedometers required in buses

Require-  
ments as  
to tires

**51.**—(1) All self-propelled vehicles other than traction engines, and all trailers having a gross weight in excess of 1,820 kilograms, shall be equipped with rubber tires or tires of some composition equally resilient, and a vehicle shall not be operated on any highway with a tire that is broken or defective in such a manner as to cause additional impact or pounding on or cutting of the highway, and in the case of motor vehicles and trailers equipped with solid rubber tires there shall be at least 31.5 millimetres of rubber between the wheel rim and the roadway. R.S.O. 1970, c. 202, s. 43 (1); 1978, c. 4, s. 8.

Flanges and  
clamps

(2) No vehicle shall be operated or object moved over or upon any highway with any flange, rib, clamp or other device attached to its wheels, or made a part thereof, which will injure the highway.

Lock-shoes

(3) No person driving a vehicle drawn by a horse or other animal and used for carrying articles of burden, goods, wares or merchandise shall when descending a grade on a highway lock any wheel of such vehicle except with the device commonly known as a lock-shoe. R.S.O. 1970, c. 202, s. 43 (2, 3).

Regulations

**52.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the standards and specifications of tires or any class or classes thereof in use on vehicles or any class or classes thereof;
- (b) prescribing classes of tires;
- (c) prescribing the standards and specifications of used or retreaded tires offered for sale and prohibiting the sale of such tires or any type thereof that do not comply with the standards and specifications therefor prescribed by the regulations or that are not marked in accordance with the regulations;
- (d) providing for and requiring the identification and marking of used or retreaded tires;
- (e) prohibiting the use of any type of tire on a highway at any time or during any period of the year and designating such period;
- (f) prescribing procedures for examining tires for the purpose of determining whether the prescribed standards and specifications have been met;

- (g) regulating installation and placement of tires to be used on vehicles or any class or classes thereof;
- (h) regulating combinations of tires installed on vehicles or any class or classes thereof;
- (i) prescribing forms for the purposes of subsection (5). 1980, c. 37, s. 6 (1).

(2) Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, and may require compliance with any code that is so adopted. R.S.O. 1970, c. 202, s. 44 (2). Codes

(3) No person shall drive or draw a vehicle on a highway, Offence

- (a) fitted with a tire that does not conform with the standards and specifications prescribed in the regulations; or
- (b) fitted with tires that are installed in a manner, in a place or in a combination that does not conform with the specifications prescribed in the regulations.

(4) Every person who contravenes this section or any regulation made under this section is guilty of an offence and on conviction is liable to a fine of not more than \$500. Penalty

(5) Where a constable or an officer appointed for the purpose of carrying out the provisions of this Act reasonably believes that a vehicle being operated on a highway is equipped with tires that do not conform to standards and specifications prescribed by the regulations, he may give the driver of the vehicle involved in the contravention a written notice in the prescribed form requiring the driver, within ninety-six hours after receiving the notice, to produce to a constable or officer at a location specified in the notice, evidence that the tires on the vehicle do not contravene the Act or the regulations, that the vehicle has been equipped with tires that conform to the prescribed standards and specifications or that an "unfit motor vehicle permit" has been issued for the vehicle. Notice to conform

(6) Subsection (4) does not apply to a person who has received a notice under subsection (5) and has complied with the notice. 1980, c. 37, s. 6 (2). Non-application of subs. (4)

**53.**—(1) In this section, "rebuild" means to make or impose a new tread or new surface or to otherwise alter the surface of a used tire so that it will resemble a new tire, by cutting into or adding rubber to the surface thereof, or by a combination of both. R.S.O. 1970, c. 202, s. 45 (1). Rebuilt tires, interpretation

Rebuilt  
tires, to be  
marked

(2) No person shall rebuild any tire designed for use upon a motor vehicle unless he causes it to be indicated in letters of not less than six millimetres in height, clearly embossed upon or imposed or cut into the outside surface of each wall of the tire, that it has been rebuilt. R.S.O. 1970, c. 202, s. 45 (2); 1978, c. 4, s. 9 (1).

Idem

(3) No person shall sell, offer or expose for sale, or have in his possession with intent to sell, any tire designed for use upon a motor vehicle that has been rebuilt unless it is indicated in letters of not less than six millimetres in height, clearly embossed upon or imposed or cut into the outside surface of each wall of the tire, that it has been rebuilt. R.S.O. 1970, c. 202, s. 45 (3); 1978, c. 4, s. 9 (2).

Penalty

(4) Every person who contravenes any of the provisions of subsection (2) or (3) is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 202, s. 45 (4).

Safety glass,  
interpre-  
tation

**54.**—(1) In this section, “motor vehicle” includes any apparatus or device that is permanently or temporarily attached to a motor vehicle, other than for the purpose of towing it, and in which a person can ride. R.S.O. 1970, c. 202, s. 46 (1).

Motor  
vehicles to  
be equipped  
with safety  
glass

(2) No person shall sell any new motor vehicle nor shall any new motor vehicle be registered with the Ministry unless such vehicle is equipped with safety glass wherever glass is used in doors, windows and windshields. R.S.O. 1970, c. 202, s. 46 (2); 1972, c. 1, s. 1.

Installation  
of safety  
glass

(3) No person shall install glass other than safety glass in the door, window or windshield of any motor vehicle. R.S.O. 1970, c. 202, s. 46 (3).

Regulations  
as to safety  
glass in  
vehicles

(4) The Lieutenant Governor in Council may make regulations,

(a) prescribing standards and specifications for safety glass used or intended to be used in a door, window or windshield of any motor vehicle;

(b) providing for and requiring the marking and identification of safety glass used or intended to be used in a door, window or windshield of any motor vehicle.

Adoption  
of code by  
reference

(5) Any regulation made under subsection (4) may adopt by reference, in whole or in part with such changes as the Lieutenant Governor in Council considers necessary, any code

or standard and may require compliance with any code or standard that is so adopted. 1973, c. 45, s. 15 (1).

(6) Every person who contravenes any of the provisions of this section or of a regulation made under this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 202, s. 46 (4); 1973, c. 45, s. 15 (2). Penalty

**55.—**(1) No person shall drive a motor vehicle upon a highway, Signs, objects, etc., obstructing view prohibited

(a) with any sign, poster or other non-transparent material or object placed on the windshield or on any window of such motor vehicle; or

(b) with any object placed in, hung on or attached to such motor vehicle,

in such manner as will obstruct the driver's view of the highway or any intersecting highway. R.S.O. 1970, c. 202, s. 47 (1).

(2) No person shall drive a motor vehicle upon a highway where the surface of the windshield or of any window of the vehicle has been coated with any colour spray or other colour coating in such a manner as to obstruct the driver's view of the highway or any intersecting highway. 1973, c. 45, s. 16. Colour coating obstructing view prohibited

(3) No person shall drive on a highway a motor vehicle on which the surface of the windshield or of any window to the direct left or right of the driver's seat has been coated with any coloured spray or other coloured or reflective material that substantially obscures the interior of the motor vehicle when viewed from outside the motor vehicle. 1980, c. 37, s. 7. Colour coating obscuring interior

(4) This section does not prevent the use of signs, markers or equipment required under this Act or the regulations. R.S.O. 1970, c. 202, s. 47 (2). Signs, etc., required by Act or regulations

**56.—**(1) No person shall drive a motor vehicle upon a highway, Windows to afford clear view

(a) unless the windshield and the windows on either side of the compartment containing the steering wheel are in such a condition as to afford the driver a clear view to the front and side of the motor vehicle; and

- (b) unless the rear window is in such a condition as to afford the driver a clear view to the rear of the motor vehicle.

Application  
of cl. (1) (b)

(2) Clause (1) (b) does not apply to a motor vehicle that is equipped with a mirror or mirrors securely attached to the motor vehicle and placed in such a position and maintained in such a condition as to afford the driver, otherwise than through the rear window, a clearly-reflected view of the roadway in the rear or of any vehicle approaching from the rear. R.S.O. 1970, c. 202, s. 48.

Muffler

**57.**—(1) Every motor vehicle or motor assisted bicycle shall be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and excessive smoke, and no person shall use a muffler cut-out, straight exhaust, gutted muffler, hollywood muffler, by-pass or similar device upon a motor vehicle or motor assisted bicycle. R.S.O. 1970, c. 202, s. 49 (1); 1974, c. 123, s. 13 (1).

Idem

(2) Subsection (1) does not apply to a motor assisted bicycle with an attached motor that is driven by electricity. 1974, c. 123, s. 13 (2).

Fumes from  
engine

(3) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

Unnecessary  
noise

(4) A person having the control or charge of a motor vehicle shall not sound any bell, horn or other signalling device so as to make an unreasonable noise, and a driver of any motor vehicle shall not permit any unreasonable amount of smoke to escape from the motor vehicle, nor shall such driver at any time cause the motor vehicle to make any unnecessary noise, but this subsection does not apply to a motor vehicle of a municipal fire department while proceeding to a fire or answering a fire alarm call. R.S.O. 1970, c. 202, s. 49 (2, 3).

Alarm bell  
to be  
sounded

(5) Every motor vehicle, motor assisted bicycle, bicycle and tricycle shall be equipped with an alarm bell, gong or horn, which shall be kept in good working order and sounded whenever it is reasonably necessary to notify pedestrians or others of its approach. R.S.O. 1970, c. 202, s. 49 (4); 1974, c. 123, s. 13 (3).

Prohibition  
as to use of  
siren horn

(6) No vehicle other than an ambulance, fire or police department vehicle, public utility emergency vehicle or vehicle operated by the Ministry shall be equipped with a siren horn or a device producing a sound which so nearly resembles

that produced by a siren horn as to deceive or confuse.  
R.S.O. 1970, c. 202, s. 49 (5); 1972, c. 1, s. 1.

**58.**—(1) Every farm tractor and self-propelled implement of husbandry when operated on a highway or any vehicle towed by either of them, shall have a slow moving vehicle sign attached to the rear thereof in accordance with the regulations, except when directly crossing a highway.

(2) The Lieutenant Governor in Council may make regulations prescribing the type and specifications of the sign referred to in subsection (1), and the location thereof on the vehicle. R.S.O. 1970, c. 202, s. 50.

**59.**—(1) Every person travelling on a highway with a sleigh or sled drawn by a horse or other animal shall have at least two bells attached to the harness or to the sleigh or sled in such a manner as to give ample warning sound.

(2) Every person who contravenes any of the provisions of subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$5. R.S.O. 1970, c. 202, s. 51.

**60.**—(1) No person shall drive on a highway a motor vehicle that is equipped with a television receiving set,

(a) any part of which is located in the motor vehicle forward of the back of the driver's seat; or

(b) that is visible to the driver while he is operating the motor vehicle.

(2) No person shall drive on a highway a motor vehicle in which a television set, while being operated, is located in the motor vehicle forward of the back of the driver's seat or is visible to the driver while he is operating the motor vehicle. R.S.O. 1970, c. 202, s. 52.

**61.**—(1) In this section, "radar warning device" means any device or equipment designed or intended for use in a motor vehicle to warn the driver of the presence of radar speed measuring equipment in the vicinity and includes any device or equipment designed or intended for use in a motor vehicle to interfere with the transmissions of radar speed measuring equipment.

(2) No person shall drive on a highway a motor vehicle that is equipped with or that carries or contains a radar warning device.

**Powers of  
police  
officer**

(3) A police officer may at any time, without a warrant, stop, enter and search a motor vehicle that he has reasonable grounds to believe is equipped with or carries or contains a radar warning device contrary to subsection (2) and may seize and take away any radar warning device found in or upon the motor vehicle.

**Forfeiture  
of device**

(4) Where a person is convicted of an offence under this section, any device seized under subsection (3) by means of which the offence was committed is forfeited to the Crown.

**Penalty**

(5) Every person who contravenes subsection (2) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500.

**Exception**

(6) Subsection (2) does not apply to a person who is transporting radar warning devices in sealed packages in a motor vehicle from a manufacturer to a consignee. 1977, c. 66, s. 1.

**Sale of  
radar  
warning  
devices  
prohibited**

(7) No person shall sell, offer or advertise for sale a radar warning device by retail.

**Penalty**

(8) Every person who contravenes subsection (7) is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not more than \$1,000; and

(b) for each subsequent offence, to a fine of not more than \$5,000. 1980, c. 37, s. 8.

**Attachments  
required  
when  
vehicle  
drawn on  
highway**

**62.** No motor vehicle, other than a motor vehicle in which there is a person licensed to drive a motor vehicle on a highway, trailer or other object or device shall be drawn by a motor vehicle or farm tractor on a highway unless there are two separate means of attachment so constructed and attached that the failure of one such means will not permit the motor vehicle, trailer, object or device being drawn to become detached; but this section does not apply to a trailer, object or device attached or coupled to the towing vehicle by means of a fifth wheel attachment or to a trailer or other object or device when drawn directly across a highway by a farm tractor. R.S.O. 1970, c. 202, s. 53; 1973, c. 45, s. 17.

**Modified  
suspension  
systems  
prohibited**

**63.**—(1) No person shall operate on a highway a motor vehicle on which the suspension system has been modified so that the height of the motor vehicle is more than eight centimetres higher or lower than its height at the time of its manufacture.

(2) Subsection (1) does not apply to a commercial motor vehicle <sup>Exemption</sup> having a gross weight of more than 2,400 kilograms. 1980, c. 37, s. 9.

(3) Subsections (1) and (2) do not come into force until a day to <sup>Commence-</sup> be named by proclamation of the Lieutenant Governor. 1980, <sup>ment of</sup> c. 37, s. 22 (3), *part*. <sup>subss. (1, 2)</sup>

**64.** The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations requiring any type or class of commercial motor <sup>re bumpers</sup> vehicle or trailer to be equipped with rear bumpers and prescribing the location and means of attachment of such bumpers and prescribing the specifications for such bumpers. R.S.O. 1970, c. 202, s. 54.

**65.**—(1) Every constable and every officer appointed for <sup>Examination</sup> the purpose of carrying out the provisions of this Act may <sup>of vehicle</sup> require the driver of any motor vehicle or motor assisted bicycle to submit such motor vehicle or motor assisted bicycle, together with its equipment and any trailer attached thereto, to such examinations and tests as the constable or officer may consider expedient. 1974, c. 123, s. 14 (1).

(2) Where any such vehicle, equipment or trailer is found <sup>Use of</sup> to be in a dangerous or unsafe condition, the constable or <sup>unsafe</sup> officer making the examination or tests may require the <sup>vehicle</sup> driver of the vehicle to proceed to have the vehicle, equip- <sup>prohibited</sup> ment or trailer placed in a safe condition and may order the vehicle or trailer to be removed from the highway and may prohibit the operation of the vehicle or trailer on the highway until the vehicle, equipment or trailer has been placed in a safe condition. R.S.O. 1970, c. 202, s. 55 (2).

(3) Every driver of a motor vehicle or motor assisted bicycle <sup>Penalty</sup> who refuses or fails to submit the motor vehicle or motor assisted bicycle, together with its equipment and any trailer attached thereto, to such examination and tests as may be required by a constable or officer under subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$100. R.S.O. 1970, c. 202, s. 55 (3); 1974, c. 123, s. 14 (2).

(4) Subsection (3) does not apply unless the constable or <sup>Notice</sup> officer under subsection (1) has given to the driver of the <sup>requiring</sup> motor vehicle or motor assisted bicycle a written notice <sup>examination</sup> and tests

in the form prescribed by the Lieutenant Governor in Council requiring the driver to submit the motor vehicle or motor assisted bicycle, together with its equipment and any trailer attached thereto, to examination and tests. R.S.O. 1970, c. 202, s. 55 (4); 1974, c. 123, s. 14 (3).

Seizure  
of plates

(5) Where the operation of a motor vehicle or trailer has been prohibited under subsection (2), the constable or officer may seize the number plates of the motor vehicle or trailer that is in a dangerous or unsafe condition and hold them until the motor vehicle or trailer has been placed in a safe condition. R.S.O. 1970, c. 202, s. 55 (5).

Regulations  
re inspection  
of certain  
motor  
vehicles

**66.** The Lieutenant Governor in Council may make regulations,

- (a) requiring the owners of commercial motor vehicles, or any type or class thereof, uninsured motor vehicles or motor assisted bicycles, and motor vehicles or motor assisted bicycles that have been involved in accidents that are reportable under section 173 to submit them to inspection;
- (b) prescribing the inspection procedures, inspection requirements and performance standards required for such motor vehicles and motor assisted bicycles;
- (c) prohibiting the operation on a highway of motor vehicles and motor assisted bicycles that do not comply with such requirements and standards, and providing for the seizure of the number plates of such motor vehicles and for holding them until the motor vehicle is made to comply with such requirements and standards. R.S.O. 1970, c. 202, s. 56; 1974, c. 123, s. 15.

Penalty for  
driving  
unsafe  
vehicle

**67.** No person shall drive or operate or permit the driving or operation upon a highway of a vehicle that is in such a dangerous or unsafe condition as to endanger the driver or operator or any occupant thereof, or any person upon the highway. R.S.O. 1970, c. 202, s. 57.

Prohibition  
where  
evidence of  
inspection  
required

**68.**—(1) No person shall operate or permit to be operated on a highway a vehicle of a type or class prescribed by the regulations made under clause 70 (a) unless the vehicle displays, affixed in the place and manner prescribed in the regulations, a device issued by the Ministry as evidence that the inspection requirements and performance standards prescribed by the regulations have been

complied with. 1975 (2nd Sess.), c. 6, s. 1, *part*; 1976, c. 37, s. 6 (1).

(2) Subsection (1) does not apply to an operator of a vehicle of a class or type prescribed by the regulations who produces evidence that the vehicle has met the inspection requirements and performance standards of a reciprocating province or state designated by the regulations. 1979, c. 57, s. 3.

Where  
subs. (1)  
does not  
apply

(3) Where the device required by subsection (1) is not displayed as prescribed by the regulations, a constable or officer appointed for the purposes of carrying out the provisions of this Act may seize the number plates of the vehicle. 1975 (2nd Sess.), c. 6, s. 1, *part*; 1976, c. 37, s. 6 (2).

Removal  
of plates  
by officer

**69.** No person shall issue a safety standards certificate or affix a vehicle inspection sticker except a certificate or sticker provided by the Ministry. 1975 (2nd Sess.), c. 6, s. 1, *part*.

Certificates  
and  
stickers  
provided by  
Ministry

**70.** The Lieutenant Governor in Council may make regulations,

Regulations  
re  
inspection  
of vehicles

- (a) prescribing the types or classes of vehicles requiring the device mentioned in section 68;
- (b) designating reciprocating provinces and states and prescribing types and classes of vehicles for the purposes of subsection 68 (2);
- (c) prescribing the methods and procedures relating to the use or issue of a device as evidence that the prescribed inspection procedures, inspection requirements and performance standards have been complied with;
- (d) prescribing the period of time for which the device referred to in clause (c) shall be valid and the manner of affixing and displaying the device;
- (e) prescribing the times that vehicles shall be submitted to inspection; and
- (f) defining for purposes of the regulations any word or expression used in the Act or regulations. 1975 (2nd Sess.), c. 6, s. 1, *part*; 1979, c. 57, s. 4.

**71.** In this section and in sections 72 to 84,

Interpre-  
tation

- (a) "Director" means the Director of Vehicle Inspection Standards appointed under section 72;

- (b) "licensee" means a person who is the holder of a motor vehicle inspection station licence issued under section 75;
- (c) "motor vehicle inspection mechanic" means a person who certifies by means of a safety standards certificate that a motor vehicle complies with the equipment and performance standards prescribed by the regulations;
- (d) "motor vehicle inspection station" means any premises maintained or operated for the inspection of motor vehicles and the issuance of safety standards certificates in respect of such motor vehicles;
- (e) "registrant" means a person who is registered as a motor vehicle inspection station mechanic under section 76;
- (f) "vehicle inspection record" means a form required to be completed in accordance with the regulations prior to the issue of a vehicle inspection sticker;
- (g) "vehicle inspection sticker" means the device issued as evidence that the inspection requirements and performance standards referred to in section 68 have been complied with. 1973, c. 167, s. 8, *part*; 1975 (2nd Sess.), c. 6, s. 2.

Director

**72.** The Minister shall appoint an officer of the Ministry to be the Director of Vehicle Inspection Standards for purposes of sections 71 to 84. 1973, c. 167, s. 8, *part*.

Safety  
standards  
certificate

**73.—(1)** No person shall sell a used motor vehicle unless,

- (a) on the delivery of the vehicle to the purchaser, the seller gives to the purchaser a safety standards certificate that was issued upon an inspection that was completed in respect of the motor vehicle not more than thirty days before the date of the delivery of the used motor vehicle to the purchaser; or
- (b) the seller forwards to the Ministry the notice required under subsection 12 (2) together with the current number

plates and permit issued with respect to the motor vehicle. 1973, c. 167, s. 8, *part*.

(2) A person who applies to transfer the permit, other than a CAVR cab card, issued in respect of a used motor vehicle shall, <sup>Transfer of permit</sup>

- (a) deliver to the Ministry a safety standards certificate that was issued in respect of the vehicle not more than thirty-six days before the date of the application; or
- (b) forward to the Ministry notice of the transfer of the vehicle in the form referred to in subsection 12 (2) together with the current number plates and permit issued with respect to the motor vehicle. 1973, c. 167, s. 8, *part*; 1980, c. 71, s. 12 (1).

(3) The Ministry shall not issue a permit, other than a CAVR <sup>Idem</sup> cab card, or number plates to any person upon an application to transfer the permit issued in respect of a motor vehicle or upon an application to register a used motor vehicle that is registered in another jurisdiction unless there is delivered to the Ministry a safety standards certificate issued upon an inspection that was completed in respect of the motor vehicle not more than thirty-six days before the date of the application. 1973, c. 167, s. 8, *part*; 1980, c. 71, s. 12 (2).

(4) Subsection (3) does not apply to an application, <sup>Exception</sup>

- (a) to transfer the permit issued in respect of a motor vehicle registered in Ontario that is transferred,
  - (i) to the spouse of the owner of the vehicle,
  - (ii) to the estate of the deceased owner of the vehicle, or
  - (iii) from the deceased owner or the estate of the deceased owner of the vehicle to the deceased owner's spouse; or
- (b) to register a commercial motor vehicle, other than a dump truck, that is registered in another jurisdiction and owned by a person who does not reside in Ontario. 1973, c. 167, s. 8, *part*; 1975 (2nd Sess.), c. 6, s. 3.

(5) Upon receipt of the notice together with the number plates and permit pursuant to clause (1) (b) or clause (2) (b), the Ministry <sup>Issue of permit when certificate not produced</sup>

shall issue a permit marked "unfit motor vehicle" and shall not issue number plates under Part II for the motor vehicle until application is made therefor together with a safety standards certificate that was issued in respect of an inspection of the motor vehicle completed not more than thirty days before the date of the application. 1973, c. 167, s. 8, *part*.

Sale or  
transfer to  
motor vehicle  
dealer or  
holder of  
exemption  
certificate  
R.S.O. 1980,  
c. 299

(6) Subsections (1), (2) and (3) do not apply to the sale or transfer of a used motor vehicle to a motor vehicle dealer who,

(a) is registered under the *Motor Vehicle Dealers Act*; or

(b) holds an exemption certificate issued by the Registrar issued pursuant to that Act. 1977, c. 54, s. 8.

Issue of  
safety  
standards  
certificate

**74.**—(1) No person other than a licensee or a person authorized in writing by the licensee shall issue a safety standards certificate. 1973, c. 167, s. 8, *part*.

Affixing  
vehicle  
inspection  
sticker

(2) No person other than a licensee, a motor vehicle inspection mechanic or a person authorized in writing by the licensee shall affix a vehicle inspection sticker to a vehicle. 1975 (2nd Sess.), c. 6, s. 4 (1).

Prerequisite  
for issue of  
safety  
standards  
certificate  
or affixing  
vehicle  
inspection  
sticker

(3) A safety standards certificate in respect of a motor vehicle shall not be issued or a vehicle inspection sticker affixed to a vehicle unless,

(a) the vehicle has been inspected by a motor vehicle inspection mechanic in the motor vehicle inspection station and the vehicle is found to comply with the inspection requirements and performance standards prescribed by the regulations; and

(b) the safety standards certificate or a vehicle inspection record,

(i) is made by the motor vehicle inspection mechanic who inspected the vehicle, and

(ii) is countersigned by the licensee or a person authorized in writing by the licensee. 1975 (2nd Sess.), c. 6, s. 4 (2); 1976, c. 37, s. 7.

Motor  
vehicle  
inspection  
station  
licence

**75.**—(1) No person shall establish, operate or maintain a motor vehicle inspection station except under the authority

of a licence issued by the Director under this Act and the Director may issue a licence for a motor vehicle inspection station subject to such conditions as the Director may specify in the licence.

(2) Subject to subsection (3), any person who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain a motor vehicle inspection station and who meets the requirements of this Act and the regulations and who pays the prescribed fee is entitled to be issued the licence. Issuance of licence

(3) Subject to section 79, the Director may refuse to issue a motor vehicle inspection station licence where, in his opinion, Grounds for refusal

- (a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the motor vehicle inspection station will not be operated in accordance with the law and with honesty and integrity;
- (b) the proposed motor vehicle inspection station or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;
- (c) the applicant is not competent to operate a motor vehicle inspection station in accordance with this Act and the regulations;
- (d) the equipment and premises are not suitable for the performance of the inspections for which the licence is sought.

(4) A motor vehicle inspection station licence expires with the 31st day of December in the year in which it is issued and a renewal shall be issued where the applicant is not disqualified under subsection (8). Expiration and renewal of motor vehicle inspection station licence

(5) A motor vehicle inspection station licence is not transferable. Not transferable

(6) It is a condition of a motor vehicle inspection station licence that the operation of the motor vehicle inspection station be under the charge and control of the licensee. Operator named in licence

Notice  
of change

(7) Where the licensee is a corporation, the corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation. 1973, c. 167, s. 8, *part*.

Revocation  
of licence

(8) The Director may revoke or refuse to renew a motor vehicle inspection station licence where,

- (a) any person has made a false statement in the application for the licence or a renewal thereof or in any safety standards certificate signed by the licensee or a person authorized in writing by the licensee or in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the motor vehicle inspection station;
- (b) any inspection authorized by the licence is incompetently performed;
- (c) the licensee or any motor vehicle inspection mechanic employed in the motor vehicle inspection station has misrepresented the condition of a vehicle with respect to the standards of equipment and performance prescribed by the regulations upon an inspection of the vehicle in the station for the purpose of determining whether or not to issue a safety standards certificate, sign a vehicle inspection record or affix a vehicle inspection sticker;
- (d) there is a breach of a condition of the licence;
- (e) the licensee does not comply with this Act or the regulations;
- (f) the inspections that can be performed by the motor vehicle inspection station are misrepresented; or
- (g) a change in the officers or directors of any corporation that is a licensee would afford grounds for refusing to issue a motor vehicle inspection station licence under clause (3) (a). 1973, c. 167, s. 8, *part*; 1975 (2nd Sess.), c. 6, s. 5.

Motor  
vehicle  
inspection  
mechanic

**76.**—(1) No person shall sign a vehicle inspection record as mechanic or certify in a safety standards certificate that a vehicle complies with the standards of equipment and performance prescribed by the regulations unless he is registered by the Director as a motor vehicle inspection

mechanic in a motor vehicle inspection station and the Director may so register any person for whom application is made pursuant to subsection (2). 1975 (2nd Sess.), c. 6, s. 6 (1).

(2) Where a licensee or an applicant for a motor vehicle <sup>Registration</sup> inspection station licence applies for the registration as a motor vehicle inspection mechanic in the motor vehicle inspection station of the licensee or in the proposed motor vehicle inspection station of the applicant for a licence, as the case may be, of any person who meets the requirements of this Act and the regulations, such person is entitled to be registered as a motor vehicle inspection mechanic in the motor vehicle inspection station. 1973, c. 167, s. 8, *part*.

(3) The registration of a motor vehicle inspection mechanic <sup>Expiration of registration</sup> expires with the licence of the motor vehicle inspection station to which the mechanic is registered. 1975 (2nd Sess.), c. 6, s. 6 (2).

(4) Subject to section 79, the Director may refuse to <sup>Grounds for refusal</sup> register a motor vehicle inspection mechanic where, in his opinion,

- (a) the past conduct of the mechanic affords reasonable grounds for belief that the mechanic will not act as a motor vehicle inspection mechanic in accordance with the law and with honesty and integrity; or
- (b) the mechanic is not competent to act as a motor vehicle inspection mechanic. 1973, c. 167, s. 8, *part*.

**77.** The Director may revoke the registration of a motor <sup>Revocation of registration</sup> vehicle inspection mechanic where,

- (a) the registrant or the licensee has made a false statement in the application for registration of the registrant or in a safety standards certificate or in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the registrant;
- (b) any inspection performed under the authority of his registration is incompetently performed by the registrant; or

- (c) the registrant does not comply with this Act or the regulations. 1973, c. 167, s. 8, *part*.

Hearing re  
terms of  
licence

**78.**—(1) Where the Director issues a licence under this Act and the licensee is dissatisfied with the conditions thereof prescribed by the Director, he may by written notice given to the Director and the Board require a hearing by the Board, and the Board shall appoint a time for and hold a hearing.

Decision  
of Board

(2) After a hearing under subsection (1), the Board may affirm the conditions prescribed for the licence by the Director or may cancel such conditions or may prescribe such other conditions for the licence in the place of those prescribed by the Director as it considers proper and such conditions shall be conditions of the licence. 1973, c. 167, s. 8, *part*.

Proposal to  
refuse to  
issue or  
revoke

**79.**—(1) Where the Director proposes,

- (a) to refuse to issue or renew a licence;
- (b) to refuse to make a registration; or
- (c) to revoke a licence or registration,

the Director shall serve notice of his proposal, together with written reasons therefor,

- (d) in the case of a proposal to refuse to issue a licence, upon the applicant;
- (e) in the case of a proposal to revoke or to refuse to renew a licence, upon the licensee;
- (f) in the case of a proposal to refuse to make a registration, upon the applicant or licensee and upon the proposed registrant; and
- (g) in the case of a proposal to revoke a registration, upon the registrant and the licensee of the motor vehicle inspection station in which the registrant is employed.

Notice

(2) A notice under subsection (1) shall inform the applicant, licensee, registrant or proposed registrant, as the case may be, that he is entitled to a hearing by the Board if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Director and the Board requiring a hearing by the Board and he may so require such a hearing.

(3) Where the applicant, licensee, registrant or proposed registrant does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposal stated in the notice under subsection (1).

Powers of  
Director  
where no  
hearing

(4) Where the applicant, licensee, registrant or proposed registrant requires a hearing by the Board in accordance with subsection (2), the Board shall appoint a time for and shall hold the hearing and may by order direct the Director to carry out his proposal or refrain from carrying out his proposal and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Power of  
Board where  
hearing

(5) The Board may extend the time for the giving of notice requiring a hearing by the applicant, licensee, registrant or proposed registrant, under this section either before or after the expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the applicant, licensee, registrant or proposed registrant, pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Extension of  
time for  
requiring  
hearing

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of the licence, the licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

Continuation of  
licence pending  
renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the Board has made its decision. 1973, c. 167, s. 8, *part*.

**80.**—(1) The Director, the applicant, licensee, registrant or proposed registrant who has required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this Act.

Parties

(2) Notice of a hearing under section 78 or 79 shall afford the applicant, licensee, registrant or proposed registrant a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence or for the registration or continuation of the registration, as the case may be.

Notice of hearing

Examination  
of docu-  
mentary  
evidence

(3) Any party to proceedings under section 78 or 79 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have taken  
part in  
investiga-  
tion, etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of  
evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings  
of fact

(6) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484

Only mem-  
bers at  
hearing to  
participate  
in decision

(7) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of  
documentary  
evidence

(8) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal  
to court

(9) Any party to the proceedings before the Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

Record to  
be filed  
in court

(10) Where any party appeals from a decision or order of the Board, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

(11) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. Minister entitled to be heard

(12) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the Director to take any action which the Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Director or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1973, c. 167, s. 8, *part*. Powers of court on appeal

**81.** Except where otherwise provided, any notice required by sections 71 to 80 or the regulations to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. 1973, c. 167, s. 8, *part*. Service of notice

**82.—(1)** The Minister may appoint one or more persons as inspectors for the purposes of sections 71 to 83 and the regulations and such appointments shall be in writing. Appointment of inspectors

(2) The Minister shall issue every inspector appointed under subsection (1) a certificate of his appointment and every inspector, in the execution of his duties under this section and the regulations, shall produce his certificate of appointment upon request. Certificate of appointment

(3) An inspector may at all reasonable times inspect the premises, operations and all records of all motor vehicle inspection stations to ensure that the provisions of sections 71 to 76 and the regulations are complied with. Powers of inspectors

(4) Upon an inspection under this section, the inspector may upon giving a receipt therefor remove any material referred to in subsection (3) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the licensee of the motor vehicle inspection station. Idem

Admissi-  
bility of  
copies

(5) Any copy made as provided in subsection (4) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original.

Obstruction

(6) No person shall obstruct the inspector or withhold or destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection. 1973, c. 167, s. 8, *part*.

Penalty

**83.**—(1) Any person who contravenes any provision of sections 71 to 82 or the regulations made under section 84 is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500. 1973, c. 167, s. 8, *part*.

Idem

(2) Any person who makes a false statement in a safety standards certificate is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500. 1973, c. 167, s. 8, *part*.

Report on  
conviction  
to Director

(3) A provincial judge or justice of the peace who makes a conviction for an offence under sections 71 to 82 or any regulation made under section 84, or the clerk of the court in which the conviction is made, shall forthwith certify the conviction to the Director setting out the name, address and description of the person convicted and the provision of this Act contravened. 1974, c. 123, s. 16.

Regulations

**84.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form and content of safety standards certificates;
- (b) prescribing inspection procedures, inspection requirements and equipment and performance standards of those items to be inspected for a safety standards certificate or a vehicle inspection sticker;
- (c) governing the safety, equipment, premises, maintenance and operation of motor vehicle inspection stations;
- (d) prescribing forms for the purposes of sections 71 to 82 and this section and providing for their use;
- (e) prescribing conditions that shall attach to motor vehicle inspection station licences or the registrations of motor vehicle inspection mechanics or any class of either of them;

- (f) classifying vehicles, motor vehicle inspection stations and motor vehicle inspection mechanics for the purposes of sections 71 to 76;
- (g) prescribing fees that shall be paid upon applications for motor vehicle inspection station licences and upon the issuance of such licences or renewals thereof and upon applications for and the registration of motor vehicle inspection mechanics;
- (h) prescribing the amount that shall be paid to the Ministry for forms of safety standards certificates and vehicle inspection stickers;
- (i) prescribing the books, records and accounts that shall be kept by licensees;
- (j) governing the reports and returns that shall be made to the Director by licensees and registrants;
- (k) prescribing the qualifications of motor vehicle inspection mechanics;
- (l) prescribing other duties of inspectors;
- (m) prescribing the form, size and content of signs that identify motor vehicle inspection stations and governing the use of such signs;
- (n) requiring and governing the return to the Ministry of unused forms of safety standards certificates, vehicle inspection records and vehicle inspection stickers and providing for refunds of amounts paid for such forms of certificates and stickers;
- (o) requiring and governing the return to the Ministry of signs provided by the Ministry to identify motor vehicle inspection stations. 1973, c. 167, s. 8, *part*; 1975 (2nd Sess.), c. 6, s. 7.

**85.** The Lieutenant Governor in Council may make regulations, Regulations  
re accessories  
and  
ornaments

- (a) requiring the use of any accessory, or any type or class thereof, on vehicles, regulating the use thereof and prescribing the specifications thereof;
- (b) prohibiting the use on vehicles of any accessory or ornament, or any type or class thereof;

- (c) prohibiting the sale or offering for sale of any accessory or ornament, or any type or class thereof, that is designed for use on vehicles;
- (d) designating an organization to test and mark its approval of any accessory designated by the regulations, and prohibiting the installation, sale or purchase of any designated accessory that is not marked as approved by the testing organization. R.S.O. 1970, c. 202, s. 59.

Safety  
devices  
on vehicles

**86.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) requiring the use or incorporation of any device or any equipment, in or on any vehicle or any class of vehicle, that may affect the safe operation of the vehicle on the highway or that may reduce or prevent injury to persons using the highway, and prescribing the specifications and regulating the installation thereof;
- (b) designating devices and designating an organization to test and mark its approval of any device so designated, and prohibiting the incorporation or use in or on a vehicle of any device so designated that is not marked as approved by the testing organization;
- (c) prescribing standards or specifications for any vehicles or any class or classes thereof;
- (d) providing for and requiring the identification and marking of vehicles or any class or classes thereof;
- (e) prescribing the types or classes of vehicles to which subsection (3) applies;
- (f) exempting any type or class of vehicle or any class of driver or passenger in a vehicle from the provisions of any regulations made under this section. R.S.O. 1970, c. 202, s. 60 (1); 1973, c. 45, s. 19; 1977, c. 54, s. 10 (1); 1980, c. 71, s. 13.

Codes

(2) Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, and may require compliance with any code that is so adopted. R.S.O. 1970, c. 202, s. 60 (2).

Prohibition  
re sale  
where non-  
compliance  
with  
regulations

(3) No person shall sell, offer or expose for sale any new vehicle of a type or class prescribed by the regulations made under clause

(1) (e) that does not comply with the standards and specifications prescribed by the regulations or that is not marked or identified as prescribed by the regulations. 1977, c. 54, s. 10 (2).

(4) Every person who contravenes any of the provisions of this section or of a regulation made under this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 202, s. 60 (3); 1977, c. 54, s. 10 (3). Penalty

**87.**—(1) Every commercial motor vehicle shall have attached to or painted on both sides of the vehicle in a clearly visible position a sign showing the name of the owner, but the Ministry may by regulation designate any vehicle or classes of vehicles to which this subsection does not apply. R.S.O. 1970, c. 202, s. 61 (1); 1972, c. 1, s. 1. Name of owner on commercial vehicles

(2) Every commercial motor vehicle and every trailer shall have securely attached to the back thereof two red reflectors approved by the Ministry, which shall be located as far apart as practicable, at the same height and in such positions as to reflect the light from the headlights of a vehicle approaching from the rear. 1980, c. 37, s. 10 (1). Reflector

(3) No person shall sell, offer or expose for sale a new commercial motor vehicle or trailer, other than a truck tractor, unless, Lamps and reflectors required on rear of new commercial motor vehicles and trailers

(a) there is affixed to each side of the rear thereof in a conspicuous position a lamp, which when lighted shall display a red light only, which shall be clearly visible for a distance of at least 150 metres from the rear of the vehicle; and

(b) there is affixed to each side of the rear thereof and placed in such a position as to reflect the light from the headlamps of a motor vehicle approaching from the rear a red reflector approved by the Ministry. R.S.O. 1970, c. 202, s. 61 (3); 1972, c. 1, s. 1; 1978, c. 4, s. 10 (2).

(4) Every road-building machine when on a highway shall have attached to or painted on both sides of the machine in a clearly visible position a sign showing the name and address of the owner. R.S.O. 1970, c. 202, s. 61 (4). Name and address of owner on road-building machine

(5) Subsection (4) does not apply to a road-building machine, operated by or on behalf of an authority having jurisdiction and control of the highway, while engaged in construction or maintenance activities on the highway. 1980, c. 37, s. 10 (2). Exemption to subs. (4)

## Penalty

(6) Every person who contravenes any of the provisions of subsection (3) is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 202, s. 61 (5).

Motorcycle  
riders, etc.,  
to wear  
helmets

**88.**—(1) No person shall ride on or operate a motorcycle or motor assisted bicycle on a highway unless he is wearing a helmet that complies with the regulations. R.S.O. 1970, c. 202, s. 62 (1); 1975, c. 78, s. 5.

## Regulations

(2) The Lieutenant Governor in Council may make regulations,

(a) prescribing the standards and specifications of helmets referred to in subsection (1);

(b) providing for and requiring the identification and marking of such helmets.

## Codes

(3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, and may require compliance with any code that is so adopted. R.S.O. 1970, c. 202, s. 62 (2, 3).

Sale of new  
vehicles  
that do not  
conform to  
federal  
standards  
prohibited  
R.S.C. 1970,  
c. 26 (1st Supp.)

**89.**—(1) No person who deals in motor vehicles, trailers or conversion units shall sell or offer to sell a new motor vehicle, trailer or conversion unit that does not conform to the standards required under the *Motor Vehicle Safety Act* (Canada) or that does not bear the National Safety Mark referred to therein. 1973, c. 45, s. 20, *part*.

Sale of  
motor  
assisted  
bicycles

(2) No person who deals in motor assisted bicycles shall sell a new motor assisted bicycle unless on the delivery of the vehicle to the purchaser, the seller gives to the purchaser a document in a form approved by the Ministry certifying that the vehicle complies with the definition of a motor assisted bicycle. 1975, c. 78, s. 6.

## Penalty

(3) Every person who contravenes any provision of subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500. 1973, c. 45, s. 20, *part*.

## Definition

**90.**—(1) In this section, “seat belt assembly” means a device or assembly composed of straps, webbing or similar material that restrains the movement of a person in order to prevent or mitigate injury to the person and

includes a pelvic restraint or an upper torso restraint or both of them.

(2) No person shall drive on a highway a motor vehicle in which a seat belt assembly required under the provisions of the *Motor Vehicle Safety Act* (Canada) at the time that the vehicle was manufactured or imported into Canada has been removed, rendered partly or wholly inoperative or modified so as to reduce its effectiveness.

Seat belt  
assembly  
R.S.C. 1970,  
c. 26  
(1st Supp.)

(3) Subject to subsection (5), every person who drives on a highway a motor vehicle in which a seat belt assembly is provided for the driver shall wear the complete seat belt assembly in a properly adjusted and securely fastened manner.

Use of  
seat belt  
assembly  
by driver

(4) Subject to subsection (5), every person who is a passenger on a highway in a motor vehicle in which a seat belt assembly is provided for the seating position occupied by the passenger shall wear the complete seat belt assembly in a properly adjusted and securely fastened manner. 1975 (2nd Sess.), c. 14, s. 1, *part*.

Use of seat  
belt assem-  
bly by  
passenger

(5) Subsections (3) and (4) do not apply to a person,

Exemption

(a) driving a motor vehicle in reverse;

(b) who holds a certificate signed by a legally qualified medical practitioner certifying that the person is,

(i) for the period stated in the certificate, unable for medical reasons to wear a seat belt assembly, or

(ii) because of the person's size, build or other physical characteristic, unable to wear a seat belt assembly;

(c) who is actually engaged in work which requires him to alight from and re-enter a motor vehicle at frequent intervals and who, while engaged in such work, does not drive or travel in that vehicle at a speed exceeding 40 kilometres per hour; or

(d) under the age of sixteen years. 1975 (2nd Sess.), c. 14, s. 1, *part*; 1977, c. 19, s. 2 (1).

(6) No person shall drive on a highway a motor vehicle in which there is a passenger who has attained the age of two years and is under sixteen years of age

Driver to  
ensure  
passenger  
uses seat  
belt assem-  
bly

and occupies a seating position for which a seat belt assembly has been provided unless that passenger is wearing the complete seat belt assembly and it is properly adjusted and securely fastened. 1975 (2nd Sess.), c. 14, s. 1, *part*.

**Exception**

(7) Subsection (6) does not apply where the passenger,

(a) is the holder of a certificate signed by a legally qualified medical practitioner certifying that the passenger is,

(i) for the period stated in the certificate, unable for medical reasons to wear a seat belt assembly, or

(ii) because of the passenger's size, build or other physical characteristic, unable to wear a seat belt assembly;

(b) is actually engaged in work which requires him to alight from and re-enter the motor vehicle at frequent intervals and the motor vehicle does not travel at a speed exceeding 40 kilometres per hour; or

(c) is occupying and properly secured in child seating and restraint systems prescribed under the regulations. 1975 (2nd Sess.), c. 14, s. 1, *part*; 1977, c. 19, s. 2 (2).

**Regulations**

(8) The Lieutenant Governor in Council may make regulations.

(a) requiring the use of child seating and restraint systems in motor vehicles on highways and prescribing the specifications thereof;

(b) providing for the exemption from any of the provisions of this section of,

(i) any type or class of motor vehicles,

(ii) any class of drivers or passengers in motor vehicles. 1975 (2nd Sess.), c. 14, s. 1, *part*.

## PART VI

### LOAD AND DIMENSIONS

**Interpretation**

**91.** In this Part,

(a) "over-dimensional farm vehicle" means a farm tractor, self-propelled implement of husbandry, im-

plement of husbandry, or any combination of them, having a weight, width, length or height in excess of the limits provided in this Part or Part VII;

- (b) "semi-trailer" means a trailer designed to be operated with the forward part of its body or chassis resting upon the body or chassis of a towing vehicle. 1977, c. 65, s. 1, *part*.

**92.—**(1) Subject to section 93, no vehicle including load Width of vehicle or contents shall have a greater width than 2.6 metres while on a highway except,

- (a) traction engines, which may have a total width not exceeding 2.8 metres; or
- (b) motor vehicles and road-building machines, operated by or on behalf of a municipality or other authority having jurisdiction and control of a highway, where such vehicles are engaged in road maintenance, including the removal of snow from a highway. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (1); 1978, c. 24, s. 6 (2); 1979, c. 57, s. 5.

(2) Subject to section 93, no load on a vehicle shall have Width of load a greater width than 2.6 metres while on a highway except,

- (a) loads of raw forest products which shall not exceed a total width of 2.7 metres at point of origin and which shall not exceed a total width of 2.8 metres at any time during transit; or
- (b) loads of loose fodder. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (2); 1978, c. 90, s. 4.

(3) Where a commercial motor vehicle is equipped with one or more rear vision mirrors that extend in whole or in part beyond either side of the vehicle, or one or more lamps, required by this Act, that extend in whole or in part beyond either side of the vehicle, the amount of such extension shall not be included in determining the maximum width of the vehicle under subsection (1). 1977, c. 65, s. 1, *part*. Rear vision mirrors and lamps not included

(4) Where a bus is equipped with rear vision mirrors, side marker lamps, side marker reflectors, side mounted turn indicators or rubber fenders around the outer edges of its wheel housings, any of which extend in whole or in part beyond either side of the vehicle, the amount of such extension shall not be included in determining the maximum width of the vehicle under subsection (1). 1980, c. 37, s. 11 (1). Rear vision mirrors, lamps, etc., not included in width of bus

(5) Where a commercial motor vehicle or trailer is equipped with a load covering mechanism, extensions in the width of such Load covering mechanism not included in width

vehicle caused by the mechanism shall not be included in determining the width of the vehicle under subsection (1) where the mechanism does not extend the width of the vehicle on either side by more than 102 millimetres. 1977, c. 65, s. 1, *part*; 1978, c. 4, s. 11 (3).

Length of  
vehicle or  
combina-  
tion

(6) Subject to section 93, no vehicle, other than a fire apparatus, a semi-trailer, or a bus, including load, shall exceed the length of eleven metres while on a highway, and no combination of vehicles, including load, coupled together shall exceed the total length of twenty-one metres while on a highway. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (4).

Length of  
semi-  
trailer

(7) Subject to section 93, no semi-trailer, other than a semi-trailer designed for the carriage of vehicles, shall exceed the length of fourteen metres while on a highway and any extension in the length of a semi-trailer caused by auxiliary equipment or machinery that is not designed for the transportation of goods shall not be included in determining the length thereof. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (5).

Length  
of bus

(8) No bus, other than an articulated bus, shall exceed the length of 12.5 metres while on a highway, but an increase in the length of a bus caused by the addition of a liquid filled or other energy-absorbing bumper shall not be included in determining the length of the bus. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (6); 1980, c. 37, s. 11 (2).

Restricting  
length of  
combina-  
tion of  
vehicles

(9) The council of a city may by by-law prohibit the operation of a combination of vehicles having a total length, including load, in excess of 15.25 metres while on a highway or a portion thereof under its jurisdiction designated in the by-law. 1977, c. 65, s. 1, *part*; 1978, c. 4, s. 11 (7).

Height of  
vehicle

(10) Subject to section 93, no vehicle including load, shall have a greater height than 4.15 metres while on a highway. 1977, c. 65, s. 2, *part*; 1978, c. 4, s. 11 (8).

Penalty

(11) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 and, in addition, the permit issued for the vehicle under section 7 may be suspended for not more than six months. 1977, c. 65, s. 1, *part*.

Permits

**93.**—(1) The municipal corporation or other authority having jurisdiction over the highway may, upon application in writing, grant a permit for the moving of heavy vehicles,

loads, objects or structures in excess of the dimensional limits set out in section 92 or the weight limits set out in Part VII.

(2) The permit referred to in subsection (1) may be general, or may limit the time and the particular highway that may be used, and may contain conditions relating to the protection of persons and property from injury or damage and the municipal corporation or other authority may require a bond or other security sufficient to cover the cost of repairing any possible damage to the highway.

Permits,  
general or  
limited

(3) The council of any municipality may, by by-law provide that a permit referred to in subsection (1) may be issued by an officer of the corporation named therein.

Who may  
issue

(4) In the case of a vehicle for which a permit is required under this section in order to pass over a highway or highways under the jurisdiction of two or more municipalities or other authorities, the permit so to do may be issued by the Ministry, which permit is in lieu of the several permits to be otherwise obtained from the municipal corporations or other authorities, and the permit may limit the time and the particular highway or highways that may be used, and may contain any special conditions or provisions that may be considered necessary to protect the highways from damage, and the Ministry may require a bond or other security sufficient to cover the cost of repairing possible damage to the highway.

Issue of  
permit by  
Ministry

(5) The owner, operator or mover of a heavy vehicle, load, object or structure in respect of which a permit is granted under this section is nevertheless responsible for all damages that may be caused to the highway by reason of the driving, operating or moving of any such heavy vehicle, load, object or structure.

Responsi-  
bility for  
damages  
caused to  
highway

(6) It is a condition of every permit issued under this section that the original of the permit be carried in the vehicle for which the permit was issued and be produced when demanded by a police officer or an officer appointed for carrying out the provisions of this Act.

Condition  
of permit

(7) Every person who operates or permits the operation of a vehicle or combination of vehicles contrary to any of the conditions of the permit is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 and, in addition, if the condition contravened is in respect of any weight allowed under the permit, a fine shall be imposed as if

Penalty

the person had not been issued a permit under this section and had been convicted of an offence under section 99, 100 or 101 in respect of any gross vehicle weight, axle unit weight or axle group weight in excess of the maximum allowable weights permitted under this Act or the regulations. 1977, c. 65, s. 1, *part*.

Over-  
hanging  
load

**94.**—(1) Every vehicle carrying a load which overhangs the rear of the vehicle to the extent of 1.5 metres or more while on a highway shall display upon such overhanging load at the extreme rear end thereof at any time from one-half hour after sunset to one-half hour before sunrise, or at any other time when there is insufficient light or unfavourable atmospheric conditions, a red light, and at all other times a red flag or a red marker sufficient to indicate the projection of the load. 1977, c. 65, s. 1, *part*; 1978, c. 4, s. 12.

Loading of  
motor  
vehicle, etc.

(2) No person shall operate or permit to be operated upon a highway any motor vehicle or trailer unless the load that the vehicle or trailer is carrying is firmly bound, sufficiently covered, or otherwise secured or loaded, in such manner that no portion of the load may become dislodged or fall from the motor vehicle or trailer. 1977, c. 65, s. 1, *part*; 1979, c. 57, s. 6.

Regulations

(3) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the manner of loading, and of covering and securing loads on vehicles or classes of vehicles operated on highways or classes of highways;
- (b) designating the vehicles or classes of vehicles and the highways or classes of highways to which any loading, covering or securing provisions are to apply; and
- (c) prescribing classes of vehicles, highways and loads for the purposes of clauses (a) and (b).

Penalty

(4) Every person who contravenes any of the provisions of this section or of a regulation made under subsection (3) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$100 and, in addition, his driver's licence issued under section 18 and his permit issued under section 7 may be suspended for a period of not more than sixty days. 1977, c. 65, s. 1, *part*.

Regulations  
re carriage  
of  
explosives,  
etc.

**95.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) classifying and defining explosives and dangerous materials;
- (b) regulating or prohibiting the transportation of explosives and dangerous materials or any class thereof by a vehicle on a highway;
- (c) regulating the preparation and packaging of explosives and dangerous materials or any class thereof to be transported by a vehicle on a highway; and
- (d) requiring the labelling of packages and containers of explosives and dangerous materials or any class thereof and prescribing the labels to be attached to such packages and containers.

(2) Any regulation made under subsection (1) may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary any code or standard, or any regulation made by the Government of Canada, and may require compliance with any code, standard or regulation that is so adopted.

Code, etc.,  
may be  
adopted by  
reference

(3) Every person who contravenes any of the provisions of a regulation made under this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than three months, or to both. 1977, c. 65, s. 1, *part*.

Penalty

**96.**—(1) The provisions of this Part, other than regulations made under this section, do not apply to over-dimensional farm vehicles.

Over-  
dimensional  
farm  
vehicles  
exempt

(2) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) regulating or prohibiting the movement of over-dimensional farm vehicles or classes thereof on a highway or on classes of highways;
- (b) requiring that escort vehicles or classes of escort vehicles accompany over-dimensional farm vehicles or classes thereof on a highway or classes of highways;
- (c) prescribing the types, specifications and locations of markings, signs and lights that shall be carried by

over-dimensional farm vehicles and escort vehicles or classes of either or both of them on a highway or classes of highways;

- (d) prescribing conditions for the movement of over-dimensional farm vehicles on a highway or classes of highways relating to the protection of persons and property from injury or damage. 1977, c. 65, s. 1, *part.*

## PART VII

### WEIGHT

Interpre-  
tation

#### 97.—(1) In this Part,

- (a) “axle” means an assembly of two or more wheels whose centres are in one transverse vertical plane and which are transmitting weight to the highway;
- (b) “axle group weight” means that part of the gross vehicle weight in kilograms transmitted to the highway by a two axle group, three axle group or four axle group;
- (c) “axle unit” means any single axle, dual axle or triple axle;
- (d) “axle unit weight” means that part of the gross vehicle weight in kilograms transmitted to the highway by an axle unit;
- (e) “Class A Highway” means a highway designated as such by the Minister;
- (f) “Class B Highway” means a highway not designated by the Minister as a Class A Highway;
- (g) “dual axle” means any two consecutive axles whose centres are more than one metre apart and that,
- (i) are articulated from a common attachment to the vehicle, or
  - (ii) are designed to automatically equalize the load between the two axles;
- (h) “four axle group” means four consecutive axles, not including the front axle of a motor vehicle,

- (i) that are entirely within either a motor vehicle or trailer or semi-trailer, and
  - (ii) in which the spacings between the consecutive axles do not exceed 2.5 metres;
- (i) "front axle" means the front axle unit of a motor vehicle;
- (j) "gross vehicle weight" means the total weight in kilograms transmitted to the highway by a vehicle, or combination of vehicles, and load;
- (k) "over-dimensional farm vehicles" means the same as it does in Part VI;
- (l) "semi-trailer" means the same as it does in Part VI;
- (m) "single axle" means one or more axles whose centres are included between two parallel transverse vertical planes one metre apart;
- (n) "tank-truck" means a commercial motor vehicle to which there is attached or upon which there has been placed either permanently or otherwise a closed tank having a capacity of 2.3 kilolitres or more;
- (o) "three axle group" means three consecutive axles, not including the front axle of a motor vehicle,
- (i) that do not form a triple axle within the meaning of clause (p),
  - (ii) that are entirely within either a motor vehicle or trailer or semi-trailer,
  - (iii) in which the spacings between the consecutive axles do not exceed 2.5 metres, and
  - (iv) which are not included in a four axle group within the meaning of clause (h);
- (p) "triple axle" means any three consecutive axles that,
- (i) have their consecutive centres equally spaced, and

- (ii) have their consecutive centres more than one metre apart,

and that,

- (iii) are articulated from an attachment to the vehicle common to the consecutive axles, or
  - (iv) are designed to automatically equalize the load between the three axles under all conditions of loading;
- (q) "two axle group" means two consecutive single axles, not including the front axle of a motor vehicle,
- (i) that are entirely within either a motor vehicle or trailer or semi-trailer,
  - (ii) in which the spacing between the consecutive axles is less than two metres, and
  - (iii) which are not included in a three axle group within the meaning of clause (o) or a four axle group within the meaning of clause (h). 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 13.

Designation  
by Minister

(2) The Minister may designate a highway as a Class A Highway. 1977, c. 65, s. 3, *part*.

Application  
of Part

(3) The provisions of this Part do not apply to over-dimensional farm vehicles or to motor vehicles or to road building machines operated by or on behalf of a municipality or other authority having jurisdiction over highways when the vehicle or machine is equipped with a snow clearing device. 1977, c. 65, s. 3, *part*; 1978, c. 90, s. 5.

Consecutive  
axles

(4) Where three consecutive axles that are articulated from an attachment to the vehicle common to the consecutive axles are not a triple axle within the meaning of clause (1) (p) because their consecutive centres are not equally spaced, that one of the three consecutive axles that is most remote from the centre axle of the consecutive axles shall be deemed to be a single axle and the other two axles shall be deemed to be a dual axle.

Idem

(5) Where three consecutive axles that are not articulated from an attachment to the vehicle common to the consecutive axles are not a triple axle within the meaning of clause (1) (p) because their consecutive centres are not equally spaced, any two of the axles that are articulated from an attachment to the vehicle common to the two axles shall be deemed to be a dual axle and the third of the three axles shall be deemed to be a single axle.

(6) The spacing between axles is the shortest distance between the centre of rotation of one axle and the centre of rotation of the other. Spacing between axles

(7) For the purposes of Tables 1 and 2, the axle spacing is the distance measured between the outer axles forming an axle unit. Axle spacing distance

(8) For the purposes of Tables 3, 4 and 5, the axle group spacing is the distance measured between the outer axles forming a two axle group, three axle group or four axle group. 1977, c. 65, s. 3, *part*. Idem

**98.**—(1) Subject to section 93, no vehicle, Restrictions as to weight on tires

(a) equipped with tires of less than 150 millimetres in width where the weight upon any millimetre in the width of the tire exceeds nine kilograms; or

(b) equipped with tires of 150 millimetres or more in width where the weight upon any millimetre in the width of the tire exceeds eleven kilograms,

shall be operated on a highway. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 14.

(2) For the purpose of this section, where a tire width has been marked thereon by the manufacturer, the width of the tire shall be deemed to be as so marked. 1977, c. 65, s. 3, *part*. How tire width ascertained

**99.**—(1) Subject to section 93, no vehicle or combination of vehicles, unless exempted under the regulations, shall be operated on a Class A Highway where the axle unit weight on an axle unit, whether or not part of any axle group, exceeds, Maximum allowable axle unit weights

(a) for a single axle with single tires, 9,000 kilograms;

(b) for a single axle with dual tires, 10,000 kilograms;

(c) for a dual axle, that weight shown in Column 2 opposite the corresponding axle spacing shown in Column 1 of Table 1; or

(d) for a triple axle, that weight shown in Column 2 opposite the corresponding axle spacing shown in Column 1 of Table 2. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 15 (1).

(2) Notwithstanding subsection (1), the maximum allowable axle unit weight for a dual axle shall not exceed 18,000 Restriction of weights allowed under subs. (1)

kilograms unless the axle is equipped with dual tires. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 15 (2).

Idem

(3) Notwithstanding subsection (1), the maximum allowable axle unit weight for a triple axle shall not exceed 27,000 kilograms unless the axle is equipped with dual tires. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 15 (3).

Idem

(4) Notwithstanding subsection (1), the maximum allowable axle unit weight for a single front axle shall not exceed 5,000 kilograms unless the driver of the vehicle or combination of vehicles has with him a verification in writing as to the manufacturer's gross axle weight rating for such single front axle.

Production  
of  
verification

(5) The driver of a vehicle or combination of vehicles being operated on a Class A Highway who has the verification referred to in subsection (4) shall produce it when so demanded by a police officer or an officer appointed for carrying out the provisions of this Act, and, where it is so demanded and not produced, the driver shall be deemed to not have the verification.

Maximum  
allowable  
axle unit  
weight

(6) Where subsection (4) does not apply because the driver has the verification referred to in subsection (4), then subject to subsection (1), the maximum allowable axle unit weight on the single front axle shall not exceed the manufacturer's gross axle weight rating. 1980, c. 37, s. 12.

Maximum  
allowable  
gross  
axle group  
weights

**100.** Subject to section 93, no vehicle or combination of vehicles, unless exempted under the regulations, shall be operated on a Class A Highway where any axle group weight exceeds,

- (a) for a two axle group, that weight shown in Column 2 opposite the corresponding axle group spacing shown in Column 1 of Table 3;
- (b) for a three axle group, that weight shown in Column 2 opposite the corresponding axle group spacing shown in Column 1 of Table 4; or
- (c) for a four axle group, that weight shown in Column 2 opposite the corresponding axle group spacing shown in Column 1 of Table 5. 1977, c. 65, s. 3, *part*.

Maximum  
allowable  
gross  
vehicle  
weights

**101.**—(1) Subject to section 93, no vehicle or combination of vehicles, unless exempted under the regulations, shall be operated on a Class A Highway where the gross vehicle weight exceeds,

- (a) the axle unit weight on the front axle, not exceeding the maximum weight permitted on such axle under section 99, plus the sum of the maximum allowable weights for all other axle units of the vehicle or combination of vehicles as set out in section 99;
- (b) the axle unit weight on the front axle, not exceeding the maximum weight permitted on such axle under section 99, plus the sum of the maximum allowable weights for any two axle groups, three axle groups or four axle groups, or any combination thereof, as set out in section 100, plus the maximum allowable weight for any axle unit or units excluding the front axle and excluding any axle unit or units which are part of an axle group, as set out in section 99; or
- (c) that weight prescribed in the regulations. 1977, c. 65, s. 3, *part*; 1979, c. 57, s. 7 (1).

(2) The driver of a vehicle or combination of vehicles being operated on a highway under a special gross vehicle weight authority issued under subsection 74 (2) of the *Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970 shall produce, when demanded by a police officer or an officer appointed for carrying out the provisions of this Act, the authority or a true copy thereof.

Driver to produce authority

(3) Every person who operates or permits the operation of a vehicle or combination of vehicles under an authority referred to in subsection (2) where the gross vehicle weight exceeds the gross vehicle weight permitted by the authority is guilty of an offence and on conviction a fine shall be imposed as if the person had not been issued the authority and had been convicted of an offence under subsection (1) in respect of any gross vehicle weight in excess of the weight permitted under subsection (1). 1977, c. 65, s. 3, *part, revised*.

Penalty

(4) Where a vehicle or combination of vehicles for which an authority referred to in subsection (2) has been issued is operated upon a highway while the weight on the front axle of the vehicle or combination of vehicles varies by more than 454 kilograms from the weight specified for the front axle on the authority, then the authority shall be deemed not to apply. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 16 (2).

Where authority does not apply

(5) An authority referred to in subsection (2) expires with the 31st day of December, 1986.

Expiry of authority

**102.**—(1) Notwithstanding sections 99, 100, 101 and subsection 104 (1), during freeze-up the maximum allowable gross

Raw forest products allowance during freeze-up

vehicle weight for a vehicle or combination of vehicles, while used exclusively for the transportation of raw forest products, shall be 110 per cent of that weight for which a permit has been issued for the vehicle or combination of vehicles in accordance with section 7, provided no axle unit weight, axle group weight or gross vehicle weight exceeds by more than 10 per cent that weight prescribed in this Act or the regulations for such vehicle or combination of vehicles. 1977, c. 65, s. 3, *part*.

Designated  
by  
Minister

(2) For the purposes of this section, the Minister may designate by regulation the date on which a "freeze-up" shall commence and the date on which a "freeze-up" shall terminate and the part of the province to which the designation shall apply. 1977, c. 65, s. 3, *part*; 1978, c. 90, s. 6.

Prohibition

(3) No vehicle or combination of vehicles having a weight in excess of that authorized in subsection (1) shall be operated on a highway. 1977, c. 65, s. 3, *part*.

Prohibition  
re operation  
on Class B  
Highway

**103.** Subject to section 93, no vehicle or combination of vehicles shall be operated on a Class B Highway where the weight upon one axle exceeds 8,200 kilograms, or, if the axles are spaced less than 2.4 metres apart, where the weight upon one axle exceeds 5,500 kilograms. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 17.

Operating  
within  
permitted  
weight  
R.S.O. 1980,  
c. 425

**104.**—(1) Subject to subsection 23 (1) of the *Public Vehicles Act*, no vehicle or combination of vehicles having a permit issued in accordance with section 7 of this Act, the fee for which is based upon gross vehicle weight, shall be operated on any highway where the gross vehicle weight exceeds that for which the permit was issued.

Permit to  
be carried re  
commercial  
motor  
vehicle

(2) The permit issued for a commercial motor vehicle and for every trailer drawn by it, or a true copy thereof, shall, whenever the vehicle is on a highway, be carried by the driver thereof or placed in some readily accessible position in the vehicle and shall be produced when demanded by a police officer or an officer appointed for carrying out the provisions of this Act or the *Public Commercial Vehicles Act*. 1977, c. 65, s. 3, *part*.

R.S.O. 1980,  
c. 407

Idem

(3) Where the permit referred to in subsection (2) is a CAVR card, the requirements of subsection (2) apply to the original permit and not to any copy thereof and to the permit from the jurisdiction that issued the number plates for the vehicle. 1980, c. 71, s. 15.

Exception  
to subs. (1)

(4) Notwithstanding subsection (1) and subject to sections 99, 100 and 101, where a conversion unit is used to convert

a two axle tractor into a three axle tractor and the fee prescribed in the regulations in respect of the conversion unit is paid, the vehicle or combination of vehicles to which the conversion unit is attached may operate on a highway at a maximum gross vehicle weight of 7,000 kilograms in excess of the gross vehicle weight for which a permit was issued for the vehicle or combination of vehicles in accordance with section 7 and the Ministry shall issue a receipt for the fee so prescribed and paid. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 18 (1).

(5) The receipt issued by the Ministry in accordance with subsection (4) shall, whenever a vehicle is on a highway with the conversion unit referred to in subsection (4) attached, be carried by the driver of the vehicle or placed in some readily accessible position in the vehicle and shall be produced when demanded by a police officer or an officer appointed for carrying out the provisions of this Act or the *Public Commercial Vehicles Act*. 1977, c. 65, s. 3, *part*. Receipt re  
excess  
weight  
payment to  
be carried  
  
R.S.O. 1980,  
c. 407

(6) Subject to section 93, during the months of March and April no commercial motor vehicle or trailer, other than a public vehicle, or a two axle tank-truck or two axle truck while either is used as referred to in subsection (7), shall be operated or drawn on any portion of the King's Highway to which the provisions of this subsection are declared applicable by the Lieutenant Governor in Council or upon any other highway not within a city or separated town, where any axle of such commercial motor vehicle or trailer transmits to the highway a weight in excess of 5,000 kilograms, and the Lieutenant Governor in Council may declare this subsection to apply. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 18 (2). Weight of  
load during  
March and  
April

(7) Subject to section 93, during the months of March and April no two axle tank-truck, while used exclusively for the transportation of liquid or gaseous heating fuel, and no two axle truck, while used exclusively for the transportation of live stock feed, shall be operated on any portion of the King's Highway to which the provisions of subsection (6) are declared applicable by the Lieutenant Governor in Council or upon any other highway not within a city or separated town, where any axle transmits to the highway a weight in excess of 7,500 kilograms. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 18 (3). Idem

(8) Subject to section 93, during the months of March and April no vehicle having a carrying capacity in excess of 1,000 kilograms, other than a motor vehicle or trailer, shall be operated on any portion of the King's Highway to which Idem

the provisions of this subsection are declared to be applicable by the Lieutenant Governor in Council or upon any other highway not within a city or separated town, where the weight upon any millimetre in the width of tire exceeds five kilograms, and the Lieutenant Governor in Council may declare this subsection to apply. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 18 (4).

Vehicles  
exempt from  
provisions  
of subss. (6, 8)

(9) Subsections (6) and (8) do not apply to,

- (a) a vehicle operated by or on behalf of a municipality or other authority having jurisdiction and control of a highway, where such vehicle is engaged in highway maintenance, including the carriage and application of abrasives or chemicals to the highway, the stockpiling of abrasives or chemicals for use on a highway, or engaged in the removal of snow from a highway;
- (b) vehicles used exclusively for the transportation of milk; or
- (c) fire apparatus. 1977, c. 65, s. 3, *part*; 1979, c. 57, s. 8.

Extension of  
period on  
King's  
Highway,  
etc.

(10) In the case of the King's Highway and highways in territory without municipal organization, the Lieutenant Governor in Council may declare the provisions of subsections (6), (8) and (14) to apply during any period of the year. 1977, c. 65, s. 3, *part*.

Extension of  
period by  
municipality

(11) The municipal corporation or other authority having jurisdiction over any highway may declare the provisions of subsections (6), (8) and (14) to apply to highways under its jurisdiction during any period of the year, or that the provisions of subsections (6) and (8) do not apply to any or all highways under its jurisdiction. 1978, c. 90, s. 7 (1).

Regulations  
limiting  
weight  
passing  
over bridge

(12) The Lieutenant Governor in Council may make regulations limiting the gross vehicle weight of any vehicle or any class thereof passing over a bridge forming part of the King's Highway or a highway in territory without municipal organization and notice of the limit of the weights fixed by such regulation, legibly printed, shall be posted up in a conspicuous place at each end of the bridge. 1977, c. 65, s. 3, *part*.

By-laws  
limiting  
weight  
passing  
over bridge

(13) The municipal corporation or other authority having jurisdiction over a bridge may by by-law approved by the Ministry limit the gross vehicle weight of any vehicle or any

class thereof passing over such bridge, and the requirements of subsection (12) with respect to the posting up of notice apply thereto. 1977, c. 65, s. 3, *part*; 1978, c. 90, s. 7 (2).

(14) Every person who contravenes any of the provisions of subsection (1), (6), (7) or (8) or of a regulation made under subsection (12) or a by-law made under subsection (13) is guilty of an offence and on conviction is liable to a fine as if he had been convicted under section 106 and, in addition, if the conviction is for a contravention under subsection (1), the Registrar may suspend the permit issued under section 7 for the vehicle or vehicles involved, and such suspension shall continue until a new permit at the maximum gross vehicle weight allowable has been issued for the vehicle or vehicles and the fee therefor has been paid. 1977, c. 65, s. 3, *part*; 1980, c. 37, s. 13.

**105.**—(1) Where a police officer or officer appointed for carrying out the provisions of this Act has reasonable and probable grounds to believe that the gross vehicle weight of a vehicle or combination of vehicles is in excess of the limits permitted under this Act or the regulations or a permit issued for the vehicle or combination of vehicles, he may weigh the same, by means of either portable or stationary scales, and may require that the vehicle or combination of vehicles be driven to the nearest weigh scales.

Penalty  
Power of  
officer to  
have load  
weighed

(2) Subsection (1) does not apply where the driver of a commercial motor vehicle produces an inventory showing the true gross vehicle weight of the vehicle or combination of vehicles.

Production  
of  
inventory

(3) Where a police officer or officer appointed for carrying out the provisions of this Act has reasonable and probable grounds to question the validity of any documents produced in accordance with subsection (2), or to believe the axle unit weight or axle group weight of a vehicle or combination of vehicles is in excess of the limits permitted under this Act or the regulations or a permit issued for the vehicle or combination of vehicles, he may weigh the same, by means of either portable or stationary scales, and may require that the vehicle or combination of vehicles be driven to the nearest weigh scales.

Power of  
officer to  
have load  
weighed

(4) To determine whether the gross vehicle weight, axle unit weight or axle group weight of any vehicle or combination of vehicles is in excess of the limits permitted under this Act or the regulations or the permit issued for the vehicle or combination of vehicles, the police officer or officer appointed for carrying out the provisions of this Act may conduct such examination as is necessary to ascertain the

Power of  
officer to  
measure  
axle space

distance between the axles of the vehicle or combination of vehicles. 1977, c. 65, s. 3, *part*.

Power of  
officer to  
require part  
of load  
removed or  
redistributed

(5) Where it is found that the gross vehicle weight, axle unit weight or axle group weight of any vehicle or combination of vehicles is in excess of the limits permitted under this Act or the regulations, or the permit issued for the vehicle or combination of vehicles, the police officer or officer appointed for carrying out the provisions of this Act may require the driver to redistribute or remove so much of the load as is necessary to ensure compliance with this Act, the regulations and the permit. 1979, c. 57, s. 9 (1).

Penalty

(6) Every driver who, when required pursuant to subsection (1) or (3) to proceed to a weigh scale, refuses or fails to do so is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 and to the suspension of his driver's licence for a period of not more than thirty days.

Idem

(7) Every driver who,

- (a) when required, pursuant to subsection (5), to redistribute or remove part of a load refuses or fails to do so or to make arrangements to do so; or
- (b) obstructs any weighing, measuring or examination authorized by this section,

is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$100. 1980, c. 71, s. 16.

Penalty

**106.** Every person who contravenes any of the provisions of subsection 98 (1), sections 99, 100 and 101, subsection 102 (3) or section 103 is guilty of an offence and on conviction is liable to a fine of,

- (a) \$2 per 100 kilograms, or part thereof, for any weight in excess of that permitted under this Act or the regulations, where the overweight is less than 5,000 kilograms, but in no case shall the fine be less than \$50;
- (b) \$4 per 100 kilograms, or part thereof, for any weight in excess of that permitted under this Act or the regulations, where the overweight is 5,000 kilograms or more but is less than 7,500 kilograms;
- (c) \$6 per 100 kilograms, or part thereof, for any weight in excess of that permitted under this Act or the regulations, where the overweight is 7,500 kilograms or more but is less than 10,000 kilograms;

- (d) \$8 per 100 kilograms, or part thereof, for any weight in excess of that permitted under this Act or the regulations, where the overweight is 10,000 kilograms or more but is less than 15,000 kilograms; and
- (e) \$10 per 100 kilograms, or part thereof, for any weight in excess of that permitted under this Act or the regulations, where the overweight is 15,000 kilograms or more. 1977, c. 65, s. 3, *part*; 1978, c. 4, s. 19.

**107.** Every consignor of goods, or his agent or employee, who causes a vehicle or combination of vehicles not owned by the consignor to be loaded, Over-loading by consignor

- (a) knowing that so loaded the weight of the vehicle, or combination of vehicles, and load when operated on a highway exceeds the limits for weight in any of the provisions of subsection 98 (1), section 101 or 102, or in the regulations, or in a permit referred to in subsection 104 (1); and
- (b) intending that the vehicle or combination of vehicles so loaded be operated on a highway,

is guilty of an offence and on conviction is liable to a fine as if he had been convicted under section 106. 1977, c. 65, s. 3, *part*.

**108.** The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing maximum allowable gross vehicle weights;
- (b) designating classes of vehicles which are exempt from the provisions of sections 99, 100 and 101 and prescribing the weights applicable for the vehicles so exempted; and
- (c) prescribing markings to be placed on vehicles. 1977, c. 65, s. 3, *part*.

TABLE 1  
MAXIMUM ALLOWABLE WEIGHT FOR  
DUAL AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,400
1.2 to less than 1.3	16,800
1.3 to less than 1.4	17,200
1.4 to less than 1.5	17,500
1.5 to less than 1.6	17,900
1.6 to less than 1.7	18,300
1.7 to less than 1.8	18,700
1.8 or more	19,100

1978, c. 4, s. 20, *part.*

TABLE 2  
MAXIMUM ALLOWABLE WEIGHT FOR  
TRIPLE AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,500
2.4 to less than 2.8	21,300
2.8 to less than 2.9	21,700
2.9 to less than 3.0	22,000
3.0 to less than 3.1	22,400
3.1 to less than 3.2	22,700
3.2 to less than 3.3	23,100
3.3 to less than 3.4	23,400
3.4 to less than 3.5	23,800
3.5 to less than 3.6	24,100
3.6 to less than 3.7	24,400
3.7 to less than 3.8	24,800
3.8 to less than 3.9	25,100
3.9 to less than 4.0	25,500
4.0 to less than 4.1	25,800
4.1 to less than 4.2	26,200
4.2 to less than 4.3	26,500
4.3 to less than 4.4	26,900
4.4 to less than 4.5	27,200
4.5 to less than 4.6	27,600
4.6 to less than 4.7	27,900
4.7 to less than 4.8	28,300
4.8 or more	28,600

1978, c. 4, s. 20, *part.*

TABLE 3  
MAXIMUM ALLOWABLE WEIGHT FOR  
TWO AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,000
1.2 to less than 1.3	16,300
1.3 to less than 1.4	16,700
1.4 to less than 1.5	17,000
1.5 to less than 1.6	17,400
1.6 to less than 1.7	17,800
1.7 to less than 1.8	18,200
1.8 to less than 1.9	18,600
1.9 to less than 2.0	19,100

1978, c. 4, s. 20, *part.*

TABLE 4  
MAXIMUM ALLOWABLE WEIGHT FOR  
THREE AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,000
2.4 to less than 2.6	20,400
2.6 to less than 2.8	21,000
2.8 to less than 2.9	21,400
2.9 to less than 3.0	21,700
3.0 to less than 3.1	22,000
3.1 to less than 3.2	22,400
3.2 to less than 3.3	22,700
3.3 to less than 3.4	23,000
3.4 to less than 3.5	23,400
3.5 to less than 3.6	23,700
3.6 to less than 3.7	24,000
3.7 to less than 3.8	24,400
3.8 to less than 3.9	24,700
3.9 to less than 4.0	25,000
4.0 to less than 4.1	25,400
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,000
4.6 to less than 4.7	27,400
4.7 to less than 4.8	27,700
4.8 to less than 4.9	28,000
4.9 to less than 5.0	28,300
5.0 or more	28,600

1978, c. 4, s. 20, *part.*

TABLE 5  
MAXIMUM ALLOWABLE WEIGHT FOR  
FOUR AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
Less than 3.6	23,500
3.6 to less than 3.7	23,900
3.7 to less than 3.8	24,200
3.8 to less than 3.9	24,600
3.9 to less than 4.0	24,900
4.0 to less than 4.1	25,300
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,100
4.6 to less than 4.7	27,500
4.7 to less than 4.8	27,800
4.8 to less than 4.9	28,200
4.9 to less than 5.0	28,500
5.0 to less than 5.1	28,900
5.1 to less than 5.2	29,300
5.2 to less than 5.3	29,600
5.3 to less than 5.4	30,000
5.4 to less than 5.5	30,300
5.5 to less than 5.6	30,700
5.6 to less than 5.7	31,100
5.7 to less than 5.8	31,400
5.8 to less than 5.9	31,800
5.9 to less than 6.0	32,100
6.0 to less than 6.1	32,500
6.1 to less than 6.2	32,900
6.2 to less than 6.3	33,200
6.3 to less than 6.4	33,600
6.4 to less than 6.5	33,900
6.5 to less than 6.6	34,300
6.6 to less than 6.7	34,700
6.7 to less than 6.8	35,000
6.8 to less than 6.9	35,400
6.9 to less than 7.0	35,700
7.0 to less than 7.1	36,100
7.1 to less than 7.2	36,500
7.2 to less than 7.3	36,800
7.3 to less than 7.4	37,200
7.4 to less than 7.5	37,600
7.5 or more	38,000

1978, c. 4, s. 20, *part.*

## PART VIII

## RATE OF SPEED

**109.**—(1) No person shall drive a motor vehicle at a rate of speed greater than, Rate of speed

(a) 80 kilometres per hour,

(i) on a highway not within a city, town, village, police village or built-up area, or

(ii) on a highway designated by the Lieutenant Governor in Council as a controlled-access highway under the *Public Transportation and Highway Improvement Act*, whether or not such a highway is within a city, town, village, police village or built-up area; R.S.O. 1980,  
c. 421

(b) subject to clause (a), 50 kilometres per hour on a highway within a city, town, village, police village or built-up area;

(c) the rate of speed prescribed for motor vehicles on a highway in accordance with the provisions of subsection (2), (3), (4), (5) or (6);

(d) the maximum rate of speed posted in a construction zone designated under subsection (7); or

(e) the rate of speed prescribed for motor vehicles on a metropolitan road in accordance with section 83 of the *Municipality of Metropolitan Toronto Act*. R.S.O. 1980,  
c. 314

(2) The council of a municipality and the trustees of a police village may by by-law prescribe a rate of speed of 40, 50, 60, 70, 80, 90 or 100 kilometres per hour for motor vehicles driven on a highway or portion of a highway under its jurisdiction. Rate of speed by by-law

(3) The council of a municipality and the trustees of a police village may by by-law prescribe a lower rate of speed for motor vehicles driven in any public park or exhibition ground than is prescribed in subsection (1), but such lower rate of speed shall not be less than 20 kilometres per hour. in public parks

(4) The council of a municipality and the trustees of a police village may by by-law, in school zones

(a) designate a portion of a highway under its jurisdiction that adjoins the entrance to or exit from a school and that

is within 150 metres along the highway in either direction beyond the limits of the land used for the purposes of the school; and

- (b) prescribe a rate of speed of 40 kilometres per hour for motor vehicles driven on the portion of a highway so designated on days on which school is regularly held and prescribe the time or times between the hours of 8.00 a.m. and 5.00 p.m. at which such speed limit is effective.

on bridges

(5) The council of a municipality and the trustees of a police village may by by-law prescribe a lower rate of speed for motor vehicles passing over a bridge on a highway under its jurisdiction than is prescribed in subsection (1) or in a by-law passed under subsection (2), but such lower rate of speed shall not be less than 10 kilometres per hour and signs indicating the maximum rate of speed shall be posted in a conspicuous place at each approach to the bridge.

Rate of  
speed by  
regulation

(6) The Minister may make regulations prescribing a rate of speed for,

- (a) motor vehicles driven on a highway or portion of a highway within a provincial park;
- (b) any class or classes of motor vehicles driven on the King's Highway or portion of the King's Highway whether or not the King's Highway is within a city, town, village or police village, and such rate of speed may be different for any period or periods of the day or night or direction of travel; and
- (c) motor vehicles driven on a highway or portion of a highway in territory without municipal organization.

Construction  
zones

(7) An official of the Ministry authorized by the Minister in writing may designate any part of the King's Highway as a construction zone, and every construction zone shall be so marked by signs in accordance with the regulations.

R.S.O. 1980,  
c. 446 does  
not apply

(8) A designation under subsection (7) is not a regulation within the meaning of the *Regulations Act*.

Speed limit  
signs in  
construction  
zones

(9) Signs posting the maximum rate of speed at which motor vehicles may be driven in a construction zone may be erected in accordance with the regulations by an official of the Ministry.

By-laws,  
regulations  
effective  
when posted

(10) No by-law passed under subsection (2), (4) or (5) or regulation made under clause (6) (c) becomes effective until the highway

or portion thereof affected by the by-law or regulation, as the case may be, is signed in accordance with this Act and the regulations.

(11) Where a by-law or regulation passed under this section or a by-law passed under section 83 of the *Municipality of Metropolitan Toronto Act* becomes effective, the rates of speed prescribed in subsection (1) do not apply to the highway or portion of the highway affected by the by-law or regulation.

Exemption  
R.S.O. 1980,  
c. 314

(12) The speed limits prescribed under this section or any regulation or by-law passed under this section do not apply to,

Fire department  
vehicles and police  
vehicles

- (a) a motor vehicle of a municipal fire department while proceeding to a fire or responding to, but not returning from, a fire alarm or other emergency call; or
- (b) a motor vehicle while used by a person in the lawful performance of his duties as a police officer.

(13) Every person who contravenes any of the provisions of this section or any by-law or regulation made under this section is guilty of an offence and on conviction is liable, where the rate of speed at which the motor vehicle was driven,

Penalty

- (a) is less than 20 kilometres per hour over the maximum speed limit, to a fine of \$1.25 for each kilometre per hour that the motor vehicle was driven over the maximum speed limit;
- (b) is 20 kilometres per hour or more but less than 40 kilometres per hour over the maximum speed limit, to a fine of \$1.75 for each kilometre per hour that the motor vehicle was driven over the maximum speed limit;
- (c) is 40 kilometres per hour or more but less than 60 kilometres per hour over the maximum speed limit, to a fine of \$2.50 for each kilometre per hour that the motor vehicle was driven over the maximum speed limit; and
- (d) is 60 kilometres per hour or more over the maximum speed limit, to a fine of \$3.25 for each kilometre per hour that the motor vehicle was driven over the maximum speed limit.

(14) Where a court or judge has convicted a person for a contravention of any provision of this section and has determined that the person convicted was driving at a rate of speed of 50 or more kilometres per hour greater than the maximum speed limit, the court may suspend the driver's licence of such person for a period of not more than thirty days. 1980, c. 37, s. 14.

Suspension of  
licence on  
conviction

Conversion  
of rate  
of speed  
set out in  
by-laws

**110.** Upon the maximum permitted rate of speed in kilometres per hour being marked on the highways or portions thereof affected, the speed limits established under a by-law passed pursuant to section 109 that are expressed as a rate of speed in miles per hour set out in Column 1 of the Table shall be deemed to be the rate of speed in kilometres per hour set out opposite thereto in Column 2 of the Table.

TABLE

COLUMN 1	COLUMN 2
Rate of Speed in Miles per Hour	Rate of Speed in Kilometres per Hour
15	20
20	30
25	40
30	50
35	60
40	60
45	70
50	80
55	90
60	100

1977, c. 19, s. 4; 1980, c. 37, s. 15.

Careless  
driving

**111.** Every person is guilty of the offence of driving carelessly who drives a vehicle on a highway without due care and attention or without reasonable consideration for other persons using the highway and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than six months, or to both, and in addition his licence or permit may be suspended for a period of not more than two years. R.S.O. 1970, c. 202, s. 83.

Territory  
without  
municipal  
organization

**112.**—(1) For the purpose of this Act, the Lieutenant Governor in Council may make regulations providing for the regulation and control of traffic on any highway or portion of a highway in territory without municipal organization where the highway is not under the jurisdiction and control of the Ministry.

Liability  
for damages

(2) With respect to a highway that is not under the jurisdiction and control of the Ministry, no action shall be brought against the Crown for damages caused by any default of the Ministry in maintaining the signs regulating and controlling traffic in territories without municipal organization and the Crown is not liable for damages sustained by any person using a highway in territory without municipal organization. 1980, c. 37; s. 16.

**113.** No motor vehicle shall be driven on a highway at such a slow rate of speed as to impede or block the normal and reasonable movement of traffic thereon except when such slow rate of speed is necessary for safe operation having regard to all the circumstances. R.S.O. 1970, c. 202, s. 85.

Unnecessary  
slow driving  
prohibited

## PART IX

### RULES OF THE ROAD

**114.—(1)** Where a constable or other police officer considers it reasonably necessary,

Direction  
of traffic by  
constable

- (a) to ensure orderly movement of traffic;
- (b) to prevent injury or damage to persons or property;  
or
- (c) to permit proper action in an emergency,

he may direct traffic according to his discretion, notwithstanding the provisions of this Part, and every person shall obey his directions. R.S.O. 1970, c. 202, s. 86.

(2) For the purposes of subsection (1), a constable or other police officer may close a highway or any part thereof to vehicles by posting or causing to be posted signs to that effect, or placing or causing to be placed traffic control devices as prescribed in the regulations.

Highway  
closing

(3) Where signs or traffic control devices have been posted or placed under subsection (2), no person shall drive or operate a vehicle on the closed highway or part thereof in intentional disobedience of the signs or traffic control devices.

Driving on  
closed  
highway  
prohibited

(4) Subsection (3) does not apply to a vehicle or road-building machine while it is being used for maintenance of the highway or an ambulance, a fire department vehicle, a public utility emergency vehicle or a police vehicle.

Exception  
to subs. (3)

(5) Every person using a highway closed to traffic in accordance with this section does so at his own risk and the Crown or road authority having jurisdiction and control of the highway is not liable for any damage sustained by a person using the highway so closed to traffic.

No Crown  
or road  
authority  
liability

## Regulations

(6) The Lieutenant Governor in Council may make regulations providing for the posting of signs and the placing of traffic control devices on any highway or any type or class thereof for the purposes of this section, and prescribing the types of signs and traffic control devices. 1978, c. 90, s. 9.

## Right of way

**115.** Subject to sections 116 and 118, a driver or operator of a vehicle approaching an intersection shall yield the right of way to a vehicle that has entered the intersection from a different highway and, when two vehicles enter an intersection from different highways at approximately the same time, the driver or operator on the left shall yield the right of way to the vehicle on the right. R.S.O. 1970, c. 202, s. 87.

Stop at  
through  
highway

**116.** The driver or operator of a vehicle or car of an electric railway,

- (a) upon approaching a stop sign at an intersection, shall bring the vehicle or car to a full stop at a clearly marked stop line or, if none, then immediately before entering the nearest crosswalk or, if none, then immediately before entering the intersection; and
- (b) upon entering the intersection, shall yield the right of way to traffic in the intersection or approaching the intersection on another highway so closely that it constitutes an immediate hazard and having so yielded the right of way may proceed with caution and the traffic approaching the intersection on another highway shall yield the right of way to the vehicle so proceeding in the intersection. R.S.O. 1970, c. 202, s. 88.

Stop signs,  
erection at  
intersections

**117.** In addition to stop signs required at intersections on through highways,

- (a) the council of a municipality and the trustees of a police village may by by-law provide for the erection of stop signs at intersections on highways under its jurisdiction; and
- (b) the Minister may by regulation designate intersections on the King's Highway at which stop signs shall be erected,

and every sign so erected shall comply with the regulations of the Ministry. R.S.O. 1970, c. 202, s. 89; 1972, c. 1, s. 1; 1974, c. 123, s. 22; 1980, c. 71, s. 17.

**118.**—(1) The driver or operator of a vehicle or car of an electric railway approaching a yield right-of-way sign shall slow down to a speed reasonable for the existing conditions or shall stop if necessary as provided in clause 116 (a) and shall yield the right of way to traffic in the intersection or approaching on the intersecting highway so closely that it constitutes an immediate hazard and having so yielded may proceed with caution. R.S.O. 1970, c. 202, s. 90 (1).

Yield  
right-of-way  
signs

(2) No yield right-of-way sign shall be erected except in compliance with the regulations. 1974, c. 123, s. 23.

Erection of  
yield signs

**119.** The driver or operator of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on the highway. R.S.O. 1970, c. 202, s. 91.

Right of  
way on  
entering  
highway  
from private  
road

**120.**—(1) Subject to subsection (2), when a pedestrian or a person in a wheelchair crossing a roadway within a pedestrian crossover,

Pedestrian  
crossover,  
duties of  
driver

(a) is upon the half of the roadway upon which a vehicle or street car is travelling; or

(b) is upon half of the roadway and is approaching the other half of the roadway on which a vehicle or street car is approaching so closely to the pedestrian crossover as to endanger him,

the driver of such vehicle or street car shall yield the right of way to the pedestrian or a person in a wheelchair by slowing down or stopping if necessary. R.S.O. 1970, c. 202, s. 92 (1); 1974, c. 123, s. 24 (1).

(2) When a vehicle or street car is stopped at a pedestrian crossover, the driver of any other vehicle or street car overtaking the stopped vehicle or street car shall bring the vehicle or street car to a full stop before entering the crossover and shall yield the right of way to a pedestrian or a person in a wheelchair,

Where  
vehicle  
stopped at  
pedestrian  
crossover

(a) who is within the crossover upon the half of the roadway upon which the vehicle or street car is stopped; or

(b) who is within the crossover and is approaching such half of the roadway from the other half of the roadway so closely to the vehicle or street car that he is in danger if the vehicle or street

car were to proceed. R.S.O. 1970, c. 202, s. 92 (2); 1974, c. 123, s. 24 (2).

Passing  
moving  
vehicles  
within 30  
metres of  
pedestrian  
crossover

(3) When a vehicle or street car is approaching a pedestrian crossover and is within 30 metres thereof, the driver of any other vehicle or street car approaching from the rear shall not allow the front extremity of his vehicle or streetcar to pass beyond the front extremity of the other vehicle or street car. 1978, c. 90, s. 10.

Duty of  
pedestrian  
or person  
in  
wheelchair

(4) No pedestrian or person in a wheelchair shall leave the curb or other place of safety at a pedestrian crossover and walk, run or move the wheelchair into the path of a vehicle or street car that is so close that it is impracticable for the driver of the vehicle or street car to yield the right of way. 1974, c. 123, s. 24 (3).

Interpre-  
tation

**121.**—(1) In this section, “centre line” means,

- (a) in the case of a highway on which traffic is permitted to move in opposing directions, the marked line or median that divides traffic moving in opposing directions on the highway or, where there is no marked line or median, the centre of the roadway; and
- (b) in the case of a highway designated for the use of one-way traffic, the left curb or edge of the roadway.

Turns;  
right at  
intersection

(2) Where a driver or operator of a vehicle intends to turn to the right into an intersecting highway, he shall, where the highway on which he is driving has marked lanes for traffic, approach the intersection within the right-hand lane or, where it has no such marked lanes, by keeping immediately to the left of the right curb or edge of the roadway and he shall make the right turn by entering the right-hand lane of the intersecting highway where such lane is marked or, where no such lane is marked, by keeping immediately to the left of the right curb or edge of the roadway being entered.

right, where  
multiple  
lanes

(3) Notwithstanding subsection (2), where more than one lane of a highway has been designated as a right-turn lane, the driver or operator of a vehicle intending to turn to the right into an intersecting highway shall approach the intersection in one of such lanes and leave the intersection in the lane of the intersecting

highway that corresponds to the lane from which the turn was commenced.

(4) No driver or operator of a vehicle in an intersection shall turn left across the path of a vehicle approaching from the opposite direction unless he has afforded a reasonable opportunity to the driver or operator of the approaching vehicle to avoid a collision.

left, across  
path of  
approaching  
vehicle

(5) Where a driver or operator of a vehicle intends to turn to the left into an intersecting highway, he shall, where the highway on which he is driving has marked lanes for traffic, approach the intersection within the left-hand lane provided for the use of traffic moving in the direction in which his vehicle is proceeding or, where it has no such marked lanes, by keeping immediately to the right of the centre line of the highway and he shall make the left turn by entering the intersection to the right of the centre line or its extension and by leaving the intersection in the left-hand lane provided for the use of traffic moving in the direction in which his vehicle is proceeding where such lane is marked or, where no such lane is marked, by passing immediately to the right of the centre line of the intersecting highway.

left, at  
intersection

(6) Notwithstanding subsection (5), where more than one lane of a highway has been designated as a left-turn lane, the driver or operator of a vehicle intending to turn to the left into an intersecting highway shall approach the intersection in one of such lanes and leave the intersection in the lane of the intersecting highway that corresponds to the lane from which the turn was commenced.

left, where  
multiple  
lanes

**122.**—(1) The driver or operator of a vehicle upon a highway before turning to the left or right at any intersection or into a private road or driveway or from one lane for traffic to another lane for traffic or to leave the roadway shall first see that such movement can be made in safety, and if the operation of any other vehicle may be affected by such movement shall give a signal plainly visible to the driver or operator of such other vehicle of the intention to make such movement.

Signal for  
left or right  
turn

(2) The driver or operator of a vehicle parked or stopped on the highway before setting the vehicle in motion shall first see that the movement can be made in safety, and, if in turning the vehicle the operation of any other vehicle may be affected by such movement, shall give a signal plainly visible to the driver or operator of such other vehicle of the intention to make such movement.

Signal when  
moving  
from  
parked  
position

(3) The signal required in subsections (1) and (2) shall be given either by means of the hand and arm in the manner herein

Mode of  
signalling  
turn

specified or by a mechanical or electrical signal device as described in subsection (5).

How to  
signal  
manually

(4) When the signal is given by means of the hand and arm, the driver or operator shall indicate his intention to turn,

(a) to the left, by extending the hand and arm horizontally and beyond the left side of the vehicle;  
or

(b) to the right, by extending the hand and arm upward and beyond the left side of the vehicle.  
R.S.O. 1970, c. 202, s. 94 (1-4).

Require-  
ments for  
signalling  
device

(5) A mechanical or electrical signal device shall clearly indicate the intention to turn, shall be visible and understandable during day-time and night-time from the front and from the rear of the vehicle for a distance of 30 metres, and shall be self-illuminated when used at any time from one-half hour after sunset to one-half hour before sunrise.  
R.S.O. 1970, c. 202, s. 94 (5); 1977, c. 19, s. 7.

Signalling  
devices  
to be used  
only for  
purpose of  
indicating  
turn

(6) No person while operating or in control of a vehicle upon a highway shall actuate the mechanical or electrical device referred to in subsection (5) for any purpose other than to indicate a movement referred to in subsection (1) or (2).

Signal for  
stop

(7) The driver or operator of a vehicle upon a highway before stopping or suddenly decreasing the speed of the vehicle, if the operation of any other vehicle may be affected by such stopping or decreasing of speed, shall give a signal plainly visible to the driver or operator of such other vehicle of the intention to stop or decrease speed,

manually

(a) by means of the hand and arm extended downward beyond the left side of the vehicle; or

signalling  
device

(b) by means of a stop lamp or lamps on the rear of the vehicle which shall emit a red or yellow light and which shall be actuated upon application of the service or foot brake and which may or may not be incorporated with one or more rear lamps. R.S.O. 1970, c. 202, s. 94 (6, 7).

U-turns  
prohibited

**123.** No driver or operator of a vehicle upon a highway shall turn the vehicle so as to proceed in the opposite direction when,

- (a) upon a curve where traffic approaching the vehicle from either direction cannot be seen by the driver of the vehicle within a distance of 150 metres;
- (b) on a railway crossing or within 30 metres of a railway crossing;
- (c) upon an approach to or near the crest of a grade where the vehicle cannot be seen by the driver of another vehicle approaching from either direction within 150 metres; or
- (d) within 150 metres of a bridge, viaduct or tunnel where the driver's view is obstructed within such distance. 1977, c. 19, s. 8.

**124.—(1)** In this section,

Interpre-  
tation

- (a) "emergency vehicle" means,

- (i) a fire department vehicle while proceeding to a fire or responding to, but not returning from, a fire alarm or other emergency call,
- (ii) a vehicle while used by a person in the lawful performance of his duties as a police officer,
- (iii) an ambulance while responding to an emergency call or being used to transport a patient or injured person in an emergency situation, or
- (iv) a cardiac arrest emergency vehicle operated by or under the authority of a hospital;

- (b) "intersection" includes any portion of a highway distinctly indicated as a crossing place for pedestrians by lines or other markings on the surface of the highway. 1979, c. 57, s. 10 (1); 1979, c. 103, s. 7.

(2) Green arrow, green, amber and red lights may be used for signal-light traffic control systems and such lights shall be arranged vertically in the following order commencing at the bottom, green arrow, green, amber and red.

Arrangement  
of lights

(3) When a green signal-light is shown at an intersection, the driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing such light may proceed across the intersection or turn left or right.

Driver rules,  
on green

flashing  
green

(4) When a green light illuminated by rapid intermittent flashes is shown at an intersection, the driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing such light may, notwithstanding subsection 121 (4), proceed across the intersection or turn left or right. R.S.O. 1970, c. 202, s. 96 (2-4).

red

(5) When a red signal-light is shown at an intersection, every driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing such light shall bring his vehicle or car to a full stop at a clearly marked stop line or, if none, then immediately before entering the nearest crosswalk or, if none, then immediately before entering the intersection, and shall not proceed until a green light is shown, but the driver or operator may, after bringing the vehicle or car to a full stop,

(a) turn to the right; or

(b) turn to the left from a one-way street into a one-way street. 1978, c. 90, s. 11 (1).

exception  
to subs. (5)

(6) Notwithstanding subsection (5), where an emergency vehicle, upon which a siren is continuously sounding and upon which a lamp is producing intermittent flashes of red light visible from all directions, is brought to a full stop at a red signal-light, the driver of the emergency vehicle may, after ascertaining that such movement can be made in safety, proceed through the intersection without waiting for a green signal-light to be shown. 1979, c. 57, s. 10 (2).

amber

(7) When an amber signal-light is shown at an intersection, the driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing such light shall bring his vehicle or car to a full stop at a clearly marked stop line or, if none, then immediately before entering the nearest crosswalk or, if none, then immediately before entering the intersection, provided that, where any such vehicle or car cannot be brought to such a stop in safety, it may be driven cautiously across the intersection.

flashing  
red

(8) Where a red signal-light illuminated by rapid intermittent flashes is shown at an intersection, the driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing such light shall bring his vehicle or car to a full stop at a clearly marked stop line or, if none, then immediately before entering the nearest crosswalk or, if none, then immediately before entering the intersection, and, upon entering the inter-

section, shall yield the right of way to traffic in the intersection or approaching the intersection on another highway so closely that it constitutes an immediate hazard and having so yielded the right of way may proceed with caution and the traffic approaching the intersection on another highway shall yield the right of way to the vehicle so proceeding in the intersection.

(9) When an amber light illuminated by rapid intermittent flashes is shown at the intersection, the driver or operator of a vehicle, or a car of an electric railway, which is approaching the intersection and facing such light, may proceed through the intersection only with caution. flashing  
amber

(10) When a red signal-light with a green arrow is shown at an intersection, the driver or operator of a vehicle, or a car of an electric railway, which is approaching the intersection and facing such light, may proceed with caution into the intersection only to make the movement indicated by such arrow, but shall yield the right of way to pedestrians and other traffic lawfully using the intersection. green  
arrow  
R.S.O. 1970, c. 202, s. 96 (6-9).

(11) Where a signal-light traffic control system shows a green arrow without the red signal-light illuminated at an intersection, the driver or operator of a vehicle or car of an electric railway that is approaching the intersection and facing the arrow may proceed into the intersection only to follow the direction indicated by the arrow. idem 1978, c. 90, s. 11 (2).

(12) When under this section the driver or operator of a vehicle or car of an electric railway is permitted to turn left or right, such driver or operator shall yield the right of way to pedestrians and other traffic lawfully within the intersection and to pedestrians or any person in a wheelchair lawfully within a crosswalk. Turns  
subject to  
pedestrian  
right of way R.S.O. 1970, c. 202, s. 96 (10); 1974, c. 123, s. 25 (1).

(13) The provisions of this section are subject to any sign forbidding a left or right turn or both that is conspicuously posted at any intersection, and the driver of a vehicle shall obey such sign. Rules  
subject to  
signs at  
intersections R.S.O. 1970, c. 202, s. 96 (11).

(14) Subject to subsection (15), a pedestrian or a person in a wheelchair approaching and facing a green light at an intersection may proceed across the roadway, provided that, where markings upon the roadway indicate the portion of the roadway to be used by pedestrian traffic, the pedestrian or the person in the wheelchair shall proceed within the marked portion. Pedestrian  
rules re  
green  
signal 1974, c. 123, s. 25 (2).

flashing  
green

(15) A pedestrian or a person in a wheelchair approaching and facing a green light illuminated by rapid intermittent flashes at an intersection shall not proceed across the roadway except in accordance with subsection (17). R.S.O. 1970, c. 202, s. 96 (13); 1974, c. 123, s. 25 (3).

red or  
amber

(16) When a red or amber signal-light is shown at an intersection, a pedestrian or a person in a wheelchair approaching such intersection and facing such light shall not enter the roadway until a green light is shown. R.S.O. 1970, c. 202, s. 96 (14); 1974, c. 123, s. 25 (4).

Pedestrian  
control  
signals

(17) Notwithstanding subsection (14),

- (a) when a "walk" pedestrian control signal is shown, a pedestrian or a person in a wheelchair facing the signal may proceed across the roadway in the direction of the signal and while so proceeding across the roadway has the right of way over all vehicles;
- (b) when a "wait" or "don't walk" pedestrian control signal is shown, a pedestrian or a person in a wheelchair facing the signal shall not commence to cross the roadway until a "walk" pedestrian control signal is shown;
- (c) a pedestrian or a person in a wheelchair proceeding across the roadway when a "wait" or "don't walk" signal is shown after he entered the roadway shall quickly proceed across the roadway and has the right of way for that purpose over all vehicles. 1974, c. 123, s. 25 (5).

Symbols

(18) The "walk", "wait" and "don't walk" pedestrian control signals referred to in subsection (17) may be shown by symbols as prescribed by the regulations. R.S.O. 1970, c. 202, s. 96 (16).

Signal-light  
traffic control  
system

(19) Every signal-light traffic control system shall consist of a minimum of two sets of,

- (a) green, amber and red signal-lights;
- (b) green arrow, amber and red signal-lights;
- (c) green arrow, green, amber and red signal-lights; or
- (d) any combination thereof.

Idem

(20) Where a signal-light traffic control system is installed, one signal-light shall be located to the right side of the

roadway used by the traffic controlled by it and to the side of the intersection that is remote from the traffic as it approaches, and at least two sets of signal-lights shall be installed facing each direction from which traffic approaches the intersection.

(21) Where traffic is controlled in separate lanes by signal-lights, one set may be suspended over the centre point of each lane separately controlled to the side of the intersecting roadway that is remote from traffic as it approaches. Idem

(22) Traffic signal-lights, where installed, shall be not less than 2.75 metres from the level of the roadway when adjacent to the travelled portion of the roadway and not less than 4.5 metres from the level of the roadway when suspended over the travelled portion of the roadway. Idem

(23) Where traffic signal-lights are installed at a location other than an intersection, the arrangement of the lights shall comply as nearly as possible with the provisions of subsections (20), (21) and (22). 1978, c. 90, s. 11 (3). Idem

(24) No signal-light traffic control system shall be operated in such a manner as to show green and amber signal-lights simultaneously. Prohibition re showing green and amber signal-lights simultaneously

(25) A signal-light traffic control system may be erected and maintained at a place other than an intersection, in which event the provisions of this section, except those that by their nature can have no application, are applicable, and any stop required shall be made at a sign or marking on the roadway indicating where the stop shall be made or, in the absence of any such sign or marking, at the signal. R.S.O. 1970, c. 202, s. 96 (18, 19). Erection of signal-lights

(26) No signal-light traffic control system shall be erected unless approval has been obtained from the Ministry or an officer of the Ministry authorized by the Minister in writing to grant such approval. Idem

(27) Additional signal-lights may be installed with the approval of the Ministry or an officer referred to in subsection (26) for use in conjunction with any signal-light traffic control system. 1977, c. 54, s. 13. Idem

**125.**—(1) Notwithstanding subsection 124 (26), during construction or maintenance activities on or adjacent to a highway, a portable lane control signal system may be operated on the highway in accordance with the regulations by the authority having jurisdiction and control of the highway, or any person authorized by that authority. Portable signal-lights

Driver rules,  
on green

(2) Where a green signal-light is shown by a portable lane control signal system, the driver or operator of a vehicle or car of an electric railway that is approaching and facing the light may proceed.

red

(3) Where a red signal-light is shown by a portable lane control signal system, every driver or operator of a vehicle or car of an electric railway that is approaching and facing the light shall bring his vehicle or car to a full stop at a sign or marking on the roadway indicating where the stop shall be made or, in the absence of any such sign or marking, at the red signal-light and shall not proceed until a green light is shown.

amber

(4) Where an amber signal-light is shown by a portable lane control signal system, every driver or operator of a vehicle or car of an electric railway that is approaching and facing the light shall bring his vehicle or car to a full stop at a sign or marking on the roadway indicating where the stop shall be made or, in the absence of any such sign or marking, at the amber signal-light, provided that, where a vehicle or car cannot be brought to a stop at an amber signal-light in safety, it may proceed with caution.

Removing,  
etc., lane  
control  
device

(5) No person shall without lawful authority remove, deface or otherwise interfere with a portable lane control signal system.

Regulations  
re portable  
lane control  
devices

(6) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the standards or specifications of portable lane control signal systems;
- (b) prescribing the location where portable lane control signal systems may be erected;
- (c) prescribing standards for maintaining portable lane control signal systems. 1979, c. 57, s. 11.

Driving on  
right side of  
multi-lane  
highway

**126.** Any vehicle proceeding upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall when practicable be driven in the right hand lane then available for traffic or as close as practicable to the right hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway. R.S.O. 1970, c. 202, s. 97.

**127.**—(1) Where a person in charge of a vehicle on a highway meets another vehicle, he shall turn out to the right from the centre of the roadway, allowing to the vehicle so met one-half of the roadway free, but this does not apply to a vehicle, road-building machine or apparatus while engaged in the construction, maintenance or marking of a highway. R.S.O. 1970, c. 202, s. 98 (1); 1978, c. 90, s. 12 (1).

Passing,  
vehicles  
meeting  
others

(2) Where a person in charge of a vehicle on a highway meets a person travelling upon a bicycle or tricycle, the person in charge of the vehicle shall allow the person travelling on the bicycle or tricycle sufficient room on the roadway to pass. R.S.O. 1970, c. 202, s. 98 (2).

Vehicles  
meeting  
bicycles,  
etc.

(3) Where a person in charge of a vehicle or on horseback on a highway is overtaken by a vehicle or horseman travelling at a greater speed, the person so overtaken shall turn out to the right and allow the overtaking vehicle or horseman to pass, but this does not apply to a vehicle, road-building machine or apparatus while engaged in the construction, maintenance or marking of a highway. 1978, c. 90, s. 12 (2).

Vehicles or  
horsemen  
overtaken  
by others

(4) Any person so overtaking another vehicle or horseman shall turn out to the left so far as may be necessary to avoid a collision with the vehicle or horseman overtaken, and the person overtaken is not required to leave more than one-half of the roadway free. R.S.O. 1970, c. 202, s. 98 (4).

Vehicles or  
horsemen  
overtaking  
others

(5) Where a person on a bicycle, motor assisted bicycle or a tricycle on a highway is overtaken by a vehicle or horseman travelling at a greater speed, the person so overtaken shall turn out to the right and allow such vehicle or horseman to pass and the person so overtaking a bicycle, motor assisted bicycle or tricycle shall turn out to the left so far as may be necessary to avoid a collision. R.S.O. 1970, c. 202, s. 98 (5); 1974, c. 123, s. 26.

Bicycles, etc.,  
overtaken  
by vehicles or  
horsemen

(6) Where one vehicle is met or overtaken by another, if by reason of the weight of the load on either of the vehicles so meeting or on the vehicle so overtaken the driver finds it impracticable to turn out, he shall immediately stop, and, if necessary for the safety of the other vehicle and if required so to do, he shall assist the person in charge thereof to pass without damage.

Driver  
unable to  
turn out is  
to stop

(7) No person in charge of a vehicle shall pass or attempt to pass another vehicle going in the same direction on a highway unless the roadway,

Passing  
vehicle going  
in same  
direction

- (a) in front of and to the left of the vehicle to be passed is safely free from approaching traffic; and
- (b) to the left of the vehicle passing or attempting to pass is safely free from overtaking traffic. R.S.O. 1970, c. 202, s. 98 (6, 7).

Driving to  
left of  
centre of  
roadway  
under  
certain  
conditions  
prohibited

**128.** No vehicle shall be driven or operated to the left of the centre of a roadway designed for one or more lines of traffic in each direction,

- (a) when approaching the crest of a grade or upon a curve in the roadway or within 30 metres of a bridge, viaduct or tunnel where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction; or
- (b) when approaching within 30 metres of a level railway crossing,

but this section does not apply to a highway designated for the use of one-way traffic or to a highway divided into clearly marked lanes where there are more such lanes for traffic in one direction than in the other direction. R.S.O. 1970, c. 202, s. 99; 1977, c. 19, s. 10.

Passing to  
right of  
vehicle

**129.**—(1) Notwithstanding section 127 and subject to subsection (2), the driver of a motor vehicle may overtake and pass to the right of another vehicle only under the following conditions,

- (a) when the vehicle overtaken is making or about to make a left turn or its driver has signalled his intention to make a left turn; or
- (b) upon a highway with unobstructed pavement of sufficient width for two or more lines of vehicles in each direction; or
- (c) upon a highway designated for the use of one-way traffic only. R.S.O. 1970, c. 202, s. 100 (1).

May pass  
to right  
only under  
safe  
conditions

(2) The driver of a motor vehicle shall not overtake and pass to the right of another vehicle where such movement cannot be made in safety and in no event shall a driver make such movement by driving off the roadway except where the shoulder to the right of the roadway is paved and the vehicle overtaken is making or about to make a left turn or its driver has signalled his intention to make a left turn. R.S.O. 1970, c. 202, s. 100 (2); 1976, c. 37, s. 13.

**130.**—(1) Where any part of the King's Highway has been designated as having a paved shoulder for use by vehicular traffic and official signs have been erected accordingly to indicate such designation, every driver of a vehicle shall obey the instructions on the official signs. 1976, c. 37, s. 14, *part*.

Drivers  
to obey  
signs  
posted at  
designated  
paved  
shoulders

(2) The Minister may make regulations,

Regulations

(a) designating any part of the King's Highway as having a paved shoulder for use by vehicular traffic;

(b) providing for the erection of signs and the placing of markings,

(i) on any highway approaching any part of the King's Highway designated as having a paved shoulder for use by vehicular traffic, and

(ii) on any part of the King's Highway designated as having a paved shoulder for use by vehicular traffic; and

(c) prescribing the types of the signs and markings referred to in clause (b), instructions to be contained thereon and the location of each type of sign and marking. 1976, c. 37, s. 14, *part*; 1980, c. 71, s. 18.

(3) A paved shoulder designated under this section shall be deemed not to be part of the roadway within the meaning of paragraph 32 of subsection 1 (1) or part of the pavement for the purposes of clause 129 (1) (b). 1976, c. 37, s. 14, *part*.

Paved  
shoulder  
deemed  
not part  
of roadway

**131.** For the purposes of sections 121, 132 and 133, "designated" means designated by the Minister or by any person authorized by him to make such designation or designated by by-law of a municipality. R.S.O. 1970, c. 202, s. 101; 1974, c. 123, s. 27; 1980, c. 37, s. 18.

Interpre-  
tation

**132.** Where a highway has been designated for the use of one-way traffic only and official signs have been erected accordingly, vehicles shall be driven only in the direction so designated. R.S.O. 1970, c. 202, s. 102.

Highway  
designated  
for one-way  
traffic

**133.** Where a highway has been divided into clearly marked lanes for traffic,

Where  
highway  
divided  
into lanes

(a) a vehicle shall be driven as nearly as may be practicable entirely within a single lane and shall not be moved from such lane until the driver

has first ascertained that such movement can be made with safety;

- (b) in the case of a highway that is divided into three lanes, a vehicle shall not be driven in the centre lane except when overtaking and passing another vehicle where the roadway is clearly visible and the centre lane is clear of traffic within a reasonable safe distance, or in preparation for a left turn, or where such centre lane is at the time designated for the use of traffic moving in the direction in which the vehicle is proceeding and official signs are erected to indicate such designation;
- (c) any lane may be designated for slowly moving traffic, traffic moving in a particular direction or classes or types of vehicles provided that official signs are erected to indicate such designation, and, notwithstanding section 121, where a highway is so designated every driver of a vehicle shall obey the instructions on the official signs but this does not apply to a motor vehicle or road-building machine, operated by or on behalf of an authority having jurisdiction and control of the highway, while the vehicle or machine is engaged in construction, marking or maintenance activities on a highway including the removal of snow from a highway. R.S.O. 1970, c. 202, s. 103; 1980, c. 71, s. 19.

Times  
designation  
applicable

**134.** A designation of a lane for classes or types of vehicles made under clause 133 (c) shall apply during the times stated on the official signs. 1976, c. 37, s. 16.

Moving from  
roadway to  
roadway on  
divided  
highways

**135.** Where a highway is divided into two separate roadways, no person shall operate or drive a vehicle or lead, ride or drive an animal,

- (a) along or on such highway except on the roadway on the right-hand side, having regard to the direction in which the vehicle is being operated or driven or the animal is being led, ridden or driven; or
- (b) from one roadway to the other roadway except where a crossing is provided. R.S.O. 1970, c. 202, s. 104.

Headway  
of motor  
vehicles

**136.—**(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicle and the traffic on and the conditions of the highway. R.S.O. 1970, c. 202, s. 105 (1).

(2) The driver of a commercial motor vehicle when driving on a highway at a speed exceeding 60 kilometres per hour shall not follow within 60 metres of another motor vehicle, but this shall not be construed to prevent a commercial motor vehicle overtaking and passing another motor vehicle. 1978, c. 90, s. 13.

Headway for  
commercial  
vehicles

**137.**—(1) The driver of a vehicle, upon the approach of an ambulance, fire or police department vehicle or public utility emergency vehicle upon which a bell or siren is sounding or upon which a lamp located on the roof of the vehicle is producing intermittent flashes of red light, shall immediately bring such vehicle to a standstill,

Fire  
department  
vehicles, etc.,  
approaching

(a) as near as is practicable to the right-hand curb or edge of the roadway and parallel therewith and clear of any intersection; or

(b) when on a roadway having more than two lanes for traffic and designated for the use of one-way traffic, as near as is practicable to the nearest curb or edge of the roadway and parallel therewith and clear of any intersection. 1973, c. 45, s. 29.

(2) No driver of a vehicle shall follow a fire department vehicle when responding to an alarm at a distance of less than 150 metres. 1977, c. 19, s. 12.

Following  
fire  
department  
vehicle

(3) In this section, “ambulance” and “fire department vehicle” have the same meaning as in section 43. 1979, c. 103, s. 8.

Interpre-  
tation

**138.** No driver of a vehicle or street car shall permit any person riding upon a bicycle, coaster, roller skates, skis, toboggan, sled or toy vehicle to attach the same or himself to the vehicle or street car. R.S.O. 1970, c. 202, s. 107.

Towing of  
persons on  
bicycles,  
toboggans,  
etc.,  
prohibited

**139.** No person shall drive on a highway a motor vehicle, other than a commercial motor vehicle, that is drawing more than one vehicle. R.S.O. 1970, c. 202, s. 108.

Only one  
vehicle to  
be drawn on  
highway

**140.** No person shall drive a motor vehicle with persons or property in the front or driver's seat so placed as to interfere with the proper management or control of the motor vehicle. R.S.O. 1970, c. 202, s. 109.

Crowding  
driver's  
seat

**141.** When the driver of a vehicle is approaching a railway crossing at a time when a clearly visible electrical or mechanical signal device or a flagman is giving warning of the approach of a railway train, he shall stop the vehicle not less than 5 metres from the nearest rail of the

Vehicles  
required to  
stop at  
railway  
crossing  
signal

railway and shall not proceed until he can do so safely. R.S.O. 1970, c. 202, s. 110; 1977, c. 19, s. 13.

Driving of  
vehicles  
under  
crossing  
gates  
prohibited

**142.** No person shall drive a vehicle through, around or under a crossing gate or barrier at a railway crossing while the gate or barrier is closed or is being opened or closed. R.S.O. 1970, c. 202, s. 111.

Opening  
of doors of  
motor  
vehicles

**143.** No person shall,

- (a) open the door of a motor vehicle on a highway without first taking due precautions to ensure that his act will not interfere with the movement of or endanger any other person or vehicle; or
- (b) leave a door of a motor vehicle on a highway open on the side of the vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers. R.S.O. 1970, c. 202, s. 112.

Require-  
ment when  
approaching  
standing  
street car

**144.**—(1) Where a person in charge of a vehicle or on a bicycle or tricycle or on horseback or leading a horse on a highway overtakes a street car or a car of an electric railway, operated in or near the centre of the roadway, which is stationary for the purpose of taking on or discharging passengers, he shall not pass the car or approach nearer than 2 metres measured back from the rear or front entrance or exit, as the case may be, of the car on the side on which passengers are getting on or off until such passengers have got on or got safely to the side of the street, as the case may be, but this subsection does not apply where a safety zone has been set aside and designated by a by-law passed under paragraph 124 of section 210 of the *Municipal Act*. R.S.O. 1970, c. 202, s. 113 (1); 1977, c. 19, s. 14.

R.S.O. 1980,  
c. 302

Prohibition  
as to passing  
street cars  
on left-hand  
side

(2) No person in charge of a vehicle, or on a bicycle or tricycle, or on horseback or leading a horse, overtaking a street car or the car of an electric railway, operated in or near the centre of the roadway, which is stationary or in motion, shall pass on the left side of such car, having reference to the direction in which such car is travelling, but this subsection does not apply to a vehicle belonging to a municipal fire department while proceeding to a fire or answering a fire alarm call or where the street car or car of an electric railway is being operated on a highway designated for the use of one-way traffic. R.S.O. 1970, c. 202, s. 113 (2).

**145.** Every person having the control or charge of a motor vehicle or motor assisted bicycle on a highway, when approaching a horse or other animal that is drawing a vehicle or being driven, led or ridden, shall operate, manage and control the motor vehicle or motor assisted bicycle in such manner as to exercise every reasonable precaution to prevent the frightening of the horse or other animal and to ensure the safety and protection of any person driving, leading or riding upon the horse or other animal or being in any vehicle drawn by the horse or other animal. R.S.O. 1970, c. 202, s. 114; 1974, c. 123, s. 28.

Approaching  
ridden or  
driven  
horses, etc.

**146.** When on a highway at any time when lighted lamps are required to be displayed on vehicles, the driver of a motor vehicle equipped with multiple beam headlamps shall use the lower or passing beam when,

Use of  
passing  
beam

- (a) approaching an oncoming vehicle within 150 metres; or
- (b) following another vehicle within 60 metres, except when in the act of overtaking and passing. R.S.O. 1970, c. 202, s. 115; 1977, c. 19, s. 15.

**147.—(1)** No person shall park, stand or stop a vehicle on a roadway,

Parking on  
roadway

- (a) when it is practicable to park, stand or stop the vehicle off the roadway; or
- (b) when it is not practicable to park, stand or stop the vehicle off the roadway unless a clear view of the vehicle and of the roadway for at least 125 metres beyond the vehicle may be obtained from a distance of at least 125 metres from the vehicle in each direction upon the highway. R.S.O. 1970, c. 202, s. 116 (1); 1977, c. 19, s. 16 (1).

(2) Subsection (1) does not apply to a roadway within a city, town or village, and the provisions of subsection (1) with respect to parking, standing or stopping do not apply to a portion of a roadway in respect of which a by-law passed by the council of a township or county or by the trustees of a police village prohibiting or regulating parking, standing or stopping on the roadway, as the case may be, is in force. R.S.O. 1970, c. 202, s. 116 (2).

Where  
subs. (1) not  
to apply

(3) The Minister may make regulations prohibiting or regulating the parking, standing or stopping of vehicles upon a highway or any part of a highway or upon any class or classes thereof. R.S.O. 1970, c. 202, s. 116 (3); 1980, c. 71, s. 20.

Regulations,  
parking, etc.

Effect of  
regulation  
on municip-  
al by-law

(4) The part of every municipal by-law that is inconsistent with or has the same effect as a regulation made under subsection (3) is revoked on the day the regulation comes into force.

Removal of  
vehicle  
parked at  
prohibited  
place

(5) Whenever a constable or an officer appointed for carrying out the provisions of this Act finds a vehicle on a highway in contravention of the provisions of this section or the regulations, he may move the vehicle or require the driver or operator or other person in charge of the vehicle to move it.

Disabled  
vehicle

(6) The provisions of this section do not apply to the driver or operator of a vehicle that is so disabled while on a highway that it is impossible to avoid temporarily a contravention of such provisions.

Precaution  
against  
vehicle  
being set  
in motion

(7) No person shall park or stand a vehicle on a highway unless he has taken such action as may be reasonably necessary in the circumstances to prevent the vehicle from moving or being set in motion. R.S.O. 1970, c. 202, s. 116 (4-7).

Warning  
lights on  
commercial  
motor  
vehicles

(8) Every commercial motor vehicle, when on a highway on which the maximum speed limit is in excess of 60 kilometres per hour at any time when lighted lamps are required to be displayed on vehicles, shall be equipped with a sufficient number of,

(a) flares, lamps or lanterns that have been approved by the Ministry, capable of continuously producing two warning lights, each visible from a distance of at least 150 metres for a period of at least eight hours; or

(b) portable reflectors that have been approved by the Ministry. R.S.O. 1970, c. 202, s. 116 (8); 1972, c. 1, s. 1; 1977, c. 19, s. 16 (2); 1978, c. 90, s. 14 (1).

Flares on  
disabled  
commercial  
motor  
vehicle or  
trailer

(9) When any commercial motor vehicle or trailer is disabled during the period when lighted lamps are required to be displayed on vehicles and the vehicle cannot immediately be removed from the roadway on which the maximum speed limit is in excess of 60 kilometres per hour, the driver or other person in charge of the vehicle shall cause such flares, lamps or lanterns to be lighted, and shall cause them or portable reflectors approved by the Ministry to be placed and maintained on the highway until such time as lighted lamps are not required to be displayed on vehicles or the removal of the vehicle, one at a distance of approximately 30 metres in advance of the vehicle and one at a distance of approximately

30 metres to the rear of the vehicle. R.S.O. 1970, c. 202, s. 116 (9); 1972, c. 1, s. 1; 1977, c. 19, s. 16 (3); 1978, c. 90, s. 14 (2).

(10) Notwithstanding the other provisions of this section, no person shall park or stand a vehicle on a highway in such a manner as to interfere with the movement of traffic or the clearing of snow from the highway. Vehicles interfering with traffic

(11) The provisions of subsection (10) with respect to parking or standing in such a manner as to interfere with the movement of traffic or with the clearing of snow from the highway do not apply to a portion of a highway in respect of which a municipal by-law prohibiting or regulating parking or standing in such a manner as to interfere with traffic or with the clearing of snow from the highway, as the case may be, is in force. Application of subs. (10), where by-law in force

(12) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not less than \$5 and not more than \$50. Penalty

(13) A constable or an officer appointed for the carrying out of the provisions of this Act, upon discovery of any vehicle parked or standing in contravention of subsection (10) or of a municipal by-law, may cause it to be moved or taken to and placed or stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, are a lien upon the vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1970, c. 202, s. 116 (10-13). Powers of constable to remove vehicle

R.S.O. 1980, c. 261

**148.**—(1) No person shall drive a motor vehicle on a highway in a race or on a bet or wager. Racing on highway

(2) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than six months, or to both, and in addition his licence may be suspended for a period of not more than two years. R.S.O. 1970, c. 202, s. 117. Penalty

**149.** No person shall race or drive furiously any horse or other animal on a highway. R.S.O. 1970, c. 202, s. 118. Horse racing on highway

**150.** The driver of,

- (a) a bus, when transporting children to and from school;  
or

Vehicles required to stop at railway crossings

(b) a public vehicle,

upon approaching on a highway a railway crossing that is not protected by gates or railway crossing signal lights or unless otherwise directed by a flagman, shall stop such vehicle not less than 5 metres from the nearest rail of the railway and, having stopped, shall look in both directions along the track and open a door of the vehicle and listen for any approaching train and, when it is safe to do so, shall cross the railway track in a gear that he will not need to change while crossing the track and he shall not change gears while crossing. R.S.O. 1970, c. 202, s. 119; 1977, c. 19, s. 17.

Interpre-  
tation

**151.**—(1) In this section, “school bus” means a bus used for the transportation of children or mentally retarded adults to and from school or a training centre that,

- (a) bears on the rear thereof the words “do not pass when signals flashing”;
- (b) is equipped with two red signal-lights on the rear thereof and two red signal-lights on the front thereof; and
- (c) is painted chrome yellow with black lettering and trim,

as required by the regulations. 1974, c. 123, s. 29 (1), *part*; 1979, c. 57, s. 12 (1).

Prohibition

(2) No bus, other than a school bus, shall be painted chrome yellow. 1974, c. 123, s. 29 (1), *part*.

Idem

(3) No motor vehicle, other than a school bus, shall bear the words “do not pass when signals flashing” or the words “school bus”. 1975, c. 64, s. 1 (1).

Interpre-  
tation

(4) For the purposes of subsection (2), a motor vehicle shall be deemed to be a bus if it is or has in the past been operated under the authority of a permit issued pursuant to section 7 for which a bus fee was paid. 1975, c. 64, s. 1 (2).

Duty of  
driver when  
school bus  
stopped on  
highway

(5) Where a school bus is stopped on a highway, the driver of a vehicle,

- (a) when overtaking a school bus on which the words “do not pass when signals flashing” are marked and two red signal-lights are illuminated by intermittent flashes; and
- (b) when meeting on such a highway, other than a highway with a median strip, a school bus on

the front of which two red signal-lights are illuminated with intermittent flashes,

shall stop the vehicle before reaching the school bus and shall not proceed until the school bus resumes motion or the signal-lights are no longer operating. R.S.O. 1970, c. 202, s. 120 (2); 1974, c. 123, s. 29 (2).

(6) Subject to subsection (7), the driver of a school bus on a highway, when he is about to stop the school bus for the purpose of receiving or discharging school children or mentally retarded adults, except at a stopping place where a signal-light traffic control system is in operation, shall actuate the red signal-lights on the school bus and shall continue them in operation while stopped for such purpose and, in the case of a highway that does not have a median strip, until those children or mentally retarded adults who of necessity must cross the highway have completed the crossing. 1975, c. 64, s. 1 (3), *part*; 1979, c. 57, s. 12 (2).

Duty of driver of school bus as to signal-lights

(7) The council of a municipality in relation to highways under its jurisdiction may by by-law designate school bus loading zones, in accordance with the regulations, to which subsection (6) does not apply.

School bus loading zones

(8) No by-law passed under subsection (7) becomes effective until the highways or portions thereof affected are marked to comply with this Act and the regulations.

Signing

(9) The driver of a school bus on a highway shall not actuate the red signal-lights on the school bus under any circumstances other than those set out in subsection (6).

Actuating red signal-lights

(10) The driver of a school bus on a highway shall not stop the school bus for the purpose of receiving or discharging school children on a highway,

School bus stopping at designated loading zones

(a) opposite a designated school bus loading zone; or

(b) at a designated school bus loading zone, except as closely as practicable to the right curb or edge of the roadway. 1975, c. 64, s. 1 (3).

(11) The words on a school bus "do not pass when signals flashing" shall be covered or concealed when the school bus is being operated on a highway during a trip that does not at any time during that trip involve the transportation of children or mentally retarded adults to or from a school or a training centre. 1980, c. 71, s. 21.

When markings to be covered

Regulations  
re school  
buses

(12) The Lieutenant Governor in Council may make regulations,

- (a) respecting the operation of vehicles or any class or type thereof used for transporting children to and from school and operated by or under contract with a school board or other authority in charge of a school or for transporting mentally retarded adults to and from a training centre;
- (b) prescribing the type, design and colour of such vehicles or any class or type thereof and the markings to be displayed thereon;
- (c) requiring the use of any equipment on or in such vehicles or any class or type thereof and prescribing the standards and specifications of such equipment;
- (d) prescribing the qualifications of drivers of such vehicles or any class or type thereof and prohibiting the operation thereof by unqualified persons;
- (e) requiring the inspection of such vehicles or any class or type thereof;
- (f) respecting the designation of school bus loading zones, the location thereof, the erection of signs and the placing of markings on highways;
- (g) prescribing the books and records that shall be kept by persons who operate vehicles used for transporting children to and from school and operated by or under contract with a school board or other authority in charge of a school;
- (h) requiring the retention of prescribed books within vehicles or any class or type thereon and prescribing the information to be contained and the entries to be recorded in the books. R.S.O. 1970, c. 202, s. 120 (6); 1974, c. 123, s. 29 (4); 1975, c. 64, s. 1 (4); 1977, c. 54, s. 14; 1979, c. 57, s. 12 (4).

Definition

**152.**—(1) In this section, “school crossing guard” means a person sixteen years of age or older employed by a municipality who is directing the movement of children across a highway. 1976, c. 37, s. 17, *part*.

School  
crossing  
guard  
shall  
display  
sign

(2) A school crossing guard about to direct children across a highway with a speed limit not in excess of 60 kilometres per hour shall, prior to entering the roadway,

display a school crossing stop sign in an upright position so that it is visible to vehicular traffic approaching from each direction. 1977, c. 19, s. 18.

(3) Where a school crossing stop sign is displayed as provided in subsection (2), the driver of any vehicle approaching the stop sign shall stop before reaching the crossing. Vehicles approaching sign

(4) A school crossing guard shall not display on a highway a school crossing stop sign under any circumstances other than those set out in subsection (2). Display of school crossing stop sign

(5) No person other than a school crossing guard shall display on a highway a school crossing stop sign. Idem

(6) The Lieutenant Governor in Council may make regulations prescribing the type, design and specifications of school crossing stop signs. 1976, c. 37, s. 17, *part.* Regulations

**153.** No person, while on the roadway, shall, Soliciting rides, etc., prohibited

(a) solicit a ride from the driver of a motor vehicle other than a public passenger conveyance; or

(b) stop or attempt to stop a motor vehicle for the purpose of selling or offering to sell any commodity or service to the driver or any other person in the motor vehicle. R.S.O. 1970, c. 202, s. 121.

**154.**—(1) A person riding upon a motor assisted bicycle, a bicycle, a coaster, roller skates, skis, a toboggan, a sled or a toy vehicle shall not attach it or them or himself to a vehicle or street car on a roadway. R.S.O. 1970, c. 202, s. 122 (1); 1974, c. 123, s. 30 (1). Motor assisted bicycle riders, etc., clinging to vehicles

(2) No person riding on a bicycle designed for carrying one person only shall carry any other person thereon. R.S.O. 1970, c. 202, s. 122 (2); 1975, c. 78, s. 8 (1). Person on bicycle

(3) No person driving a motor assisted bicycle shall carry any other person thereon. 1975, c. 78, s. 8 (2). Person on motor assisted bicycle

(4) No person shall attach himself to the outside of a vehicle or street car on a roadway for the purpose of being drawn along the roadway. R.S.O. 1970, c. 202, s. 122 (3). Persons clinging to vehicles

**155.** Where sidewalks are not provided on a highway, a pedestrian walking along the highway shall walk on Duties of pedestrian when walking along highway

the left side thereof facing oncoming traffic and, when walking along the roadway, shall walk as close to the left edge thereof as possible. R.S.O. 1970, c. 202, s. 123.

Littering  
highway  
prohibited

**156.** Every person who throws or deposits or causes to be deposited any glass, nails, tacks or scraps of metal or any rubbish, refuse, waste or litter upon, along or adjacent to a highway, except in receptacles provided for the purpose, is guilty of the offence of littering the highway. R.S.O. 1970, c. 202, s. 124.

Deposit  
of snow  
on roadway

**157.** No person shall deposit snow or ice on a roadway without permission in writing so to do from the Ministry or the road authority responsible for the maintenance of the road. 1979, c. 57, s. 13.

Signs and  
markings

**158.**—(1) The Lieutenant Governor in Council may make regulations providing for the erection of signs and the placing of markings on any highway or any type or class thereof, and prescribing the types of such signs and markings and the location on the highway of each type of sign and marking.

Signs to be  
obeyed

(2) Every driver or operator of a vehicle shall obey the instructions or directions indicated on any sign so erected. R.S.O. 1970, c. 202, s. 125.

Tunnels,  
regulations  
re

**159.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating any part of a highway as a tunnel;
- (b) providing for the erection of signs and the placing of markings,
  - (i) on any highway approaching any part of a highway designated as a tunnel,
  - (ii) on any part of a highway designated as a tunnel,

and prescribing the types of such signs and markings and the location of each type of sign and marking;

- (c) prohibiting or regulating the use of that part of the highway designated as a tunnel by pedestrians, animals or any class or classes of vehicles;
- (d) prohibiting or regulating the transportation of explosives and dangerous materials or any class thereof by a vehicle on that part of a highway designated as a tunnel.

(2) Every driver or operator of a vehicle shall obey the instructions or directions indicated on any sign so erected. R.S.O. 1970, c. 202, s. 126. Signs to be obeyed

**160.** Every person who wilfully removes, defaces or in any manner interferes with any notice or obstruction lawfully placed on a highway is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 202, s. 127. Defacing or removing notices or obstructions

**161.**—(1) The Lieutenant Governor in Council may make regulations prohibiting or regulating the use of any highway or part thereof by pedestrians or animals or any class or classes of vehicles. R.S.O. 1970, c. 202, s. 128 (1); 1974, c. 123, s. 31 (1). Regulating or prohibiting use of highway by pedestrians, etc.

(2) The council of a municipality may by by-law prohibit pedestrians or the use of motor assisted bicycles, bicycles, wheelchairs or animals on any highway or portion of a highway under its jurisdiction. 1977, c. 54, s. 15. Prohibiting motor assisted bicycles, etc., on municipal highways

**162.**—(1) The council of a municipality may by by-law prohibit the operation of, Prohibiting commercial vehicles in left lane

(a) a commercial motor vehicle other than a bus; or

(b) any combination of a commercial motor vehicle and a towed vehicle,

that exceeds 6.5 metres in length, in the left lane of any highway under its jurisdiction that has three or more lanes for traffic in each direction and on which the maximum speed limit is 80 kilometres per hour or more. 1980, c. 37, s. 19.

(2) A by-law passed pursuant to subsection (1) does not apply to the use of the left lane of a highway by a commercial motor vehicle, When prohibition does not apply

(a) that is being used for the maintenance or construction of the highway; or

(b) in an emergency.

(3) Where the council of a municipality passes a by-law pursuant to subsection (1), the municipality shall erect signs over the left lane of the highway governed by the by-law so located that they can be seen by the drivers of commercial motor vehicles entering the highway from connecting or intersecting highways. 1973, c. 167, s. 9, *part*. Signs

Removal of  
aircraft from  
highway after  
emergency  
landing

**163.**—(1) Where an aircraft has made an emergency landing on a highway, the pilot in command thereof, if he is physically capable, shall, as soon after landing as is reasonably possible, remove or cause it to be removed from the roadway.

Aircraft and  
movement  
along highway  
subject to Act

(2) Subject to subsection (3), no aircraft shall be driven or drawn along a highway unless the aircraft and the movement thereof comply with the provisions of this Act respecting vehicles and the movement thereof on a highway.

Aircraft  
take-off from  
highway

(3) Where an aircraft has landed on a highway because of an emergency related to the operation of the aircraft, the aircraft may take off from the highway provided,

(a) a commercial licensed pilot, not being the owner of the aircraft, who is qualified to fly that class and category of aircraft, and the pilot in command of the aircraft are both satisfied that the aircraft is airworthy and that there are no physical obstructions on or over the highway which would make such take-off unsafe;

(b) the pilot in command of the aircraft is satisfied that weather conditions are satisfactory for the purpose and that the minimum requirements are met under the visual flight rules established by the regulations made under the *Aeronautics Act* (Canada) or, if the flight is to be continued under instrument flight rules, that adequate arrangements can be made for obtaining a clearance from an air traffic control unit prior to entering instrument flight weather conditions;

(c) traffic control is provided by the appropriate police force; and

(d) the police force consents to the take-off.

R.S.C. 1970,  
c. A-3

Penalty

(4) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

No liability  
where good  
faith

(5) No action or other proceeding for damages shall be instituted against a police force, police officer or pilot, for an act or an omission done or omitted to be done by it or him in respect of the subject-matter of subsection (3) where the force, officer or pilot was acting in good faith. 1978, c. 90, s. 15.

**164.** No driver of a motor vehicle to which a house trailer or boat trailer is attached shall operate such motor vehicle on a highway if the trailer is occupied by any person. R.S.O. 1970, c. 202, s. 130. Riding in house or boat trailers prohibited

**165.** No person shall operate a vehicle commonly known as an air cushioned vehicle on a highway. R.S.O. 1970, c. 202, s. 131. Air cushioned vehicles prohibited on highways

## PART X

### CIVIL ACTIONS

**166.**—(1) The owner of a motor vehicle is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur, and the driver of a motor vehicle not being the owner is liable to the same extent as the owner. Liability for loss or damage

(2) Where a motor vehicle is leased, the consent of the lessee of the motor vehicle to the operation or possession thereof by some person other than the lessee shall, for the purposes of subsection (1), be deemed to be the consent of the owner of the motor vehicle. R.S.O. 1970, c. 202, s. 132 (1, 2). Consent of lessee

**167.**—(1) When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver. Onus of disproving negligence

(2) This section does not apply in case of a collision between motor vehicles or between motor vehicles and cars of electric or steam railways or other motor vehicles running only on stationary rails on the highway nor to an action brought by a passenger in a motor vehicle in respect of any injuries sustained by him while a passenger. R.S.O. 1970, c. 202, s. 133. Application of section

Service of  
notice or  
process on  
non-residents

**168.** The use of a highway within Ontario by any person not resident in Ontario operating or responsible for the operation of a motor vehicle within Ontario shall, by virtue of the right of user conferred by this Act, be deemed to constitute the Registrar an agent of such person for the service of notice or process in an action in Ontario arising out of a motor vehicle accident in Ontario in which such person is involved, subject to the following conditions:

Service of  
notice, etc.

1. Such notice or process may be served by leaving a copy thereof with or at the office of the Registrar, together with a bond in form and by sureties approved by the Registrar in the sum of \$200 conditioned on the failure of the plaintiff to prevail in the action for the purpose of reimbursing the defendant for the expenses necessarily incurred by him in defending the action in Ontario.

Sufficiency  
of service

2. Such service is sufficient service if notice of such service and a copy of the notice or process are forthwith sent by registered mail to the defendant and the defendant's return receipt is filed with the registrar or clerk of the court in which the action or proceeding is brought. R.S.O. 1970, c. 202, s. 134.

## PART XI

### MUNICIPAL BY-LAWS

Inconsist-  
ent by-laws  
are  
deemed  
invalid

**169.**—(1) If a provision of a municipal by-law passed by the council of a municipality, a board of commissioners of police or the trustees of a police village for,

- (a) regulating traffic on the highways;
- (b) regulating noise, fumes or smoke created by the operation of motor vehicles on the highways; or
- (c) prohibiting or regulating the operation of motor vehicles or any type or class thereof on the highways,

is inconsistent with this Act and the by-law would have required the approval of the Minister or of the Ministry prior to the 6th day of February, 1975, the provision of the by-law shall be deemed to be repealed.

(2) Subject to subsection (3), a copy of every municipal by-law passed for any of the purposes mentioned in clause (1) (a) or (c) except by-laws regulating or prohibiting parking, stopping or standing shall be filed with the Ministry by the clerk of the municipality within fifteen days of the passing thereof.

Filing of  
municipal  
by-laws  
with  
Ministry

(3) All by-laws passed by the council of a municipality, a board of commissioners of police or the trustees of a police village for the purposes mentioned in clause (1) (a) or (c) which affect traffic on highways designated as connecting links pursuant to subsection 21 (1) of the *Public Transportation and Highway Improvement Act* shall not become operative until approved by the Ministry.

Approval of  
traffic  
by-laws of  
connecting  
links

R.S.O. 1980,  
c. 421

(4) Any by-law for regulating traffic on highways that is submitted to the Ministry for approval may be approved in whole or in part and, where part of a by-law is approved only, that part shall become operative.

Approval  
of traffic  
by-law in  
whole or  
in part

R.S.O.

(5) The Ministry may withdraw its approval to any by-law or any part thereof by notice sent by registered mail to the clerk of the municipality and such by-law or part thereof shall be deemed to be repealed twenty-one days after the sending of the notice.

Withdrawal  
of approval  
by Ministry

R.S.O.

## PART XII

### SUSPENSION FOR FAILURE TO PAY JUDGMENTS

**170.** In this Part, "motor vehicle", in addition to the meaning given in section 1, includes "trailer", as defined in section 1.

Interpre-  
tation

**171.** Where the Registrar has suspended a licence or permit, he shall send notice of such suspension by registered mail to the latest address appearing on the records of the Ministry of the person whose licence or permit is suspended.

Notice of  
suspension

**172.—(1)** The driver's licence of every person who fails to satisfy a judgment rendered against him by any court

Licence  
suspended  
for failure  
to pay  
judgment

in Ontario that has become final by affirmation on appeal or by expiry without appeal of the time allowed for appeal, for damages on account of injury to or the death of any person, or on account of damage to property, occasioned by a motor vehicle, within fifteen days from the date upon which such judgment became final shall be suspended by the Registrar upon receiving a certificate of such final judgment from the court in which the same is rendered and after fifteen days notice has been sent to such person of intention to suspend his licence unless such judgment is satisfied within such period, and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any new driver's licence be thereafter issued to such person, until such judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy, to the extent of the minimum limits of liability required by the *Insurance Act* in respect of motor vehicle liability policies.

R.S.O. 1980,  
c. 218

Application  
where  
person  
indebted  
to fund

(2) Notwithstanding subsection (1), the Registrar shall not suspend under subsection (1) the driver's licence of any person who is indebted to the Motor Vehicle Accident Claims Fund.

Payment of  
judgments in  
instalments

(3) A judgment debtor may, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained for the privilege of paying the judgment in instalments, and the court may, in its discretion, so order, fixing the amounts and times of payment of the instalments, and while the judgment debtor is not in default in payment of such instalments, he shall be deemed not in default in payment of the judgment, and the Minister may restore the driver's licence of the judgment debtor, but such driver's licence shall again be suspended and remain suspended, as provided in subsection (1), if the Registrar is satisfied of default made by the judgment debtor in compliance with the terms of the court order.

Reciprocal  
effect of  
subs. (1)  
with states  
having  
similar  
legislation

(4) The Lieutenant Governor in Council, upon the report of the Minister that a province or state has enacted legislation similar in effect to subsection (1) and that such legislation extends and applies to judgments rendered and become final against residents of that province or state by any court of competent jurisdiction in Ontario, may declare that the provisions of subsection (1) shall extend and apply to judgments rendered and become final against residents of Ontario by any court of competent jurisdiction in such province or state. R.S.O. 1970, c. 202, s. 138.

## PART XIII

RECORDS AND REPORTING OF ACCIDENTS AND  
CONVICTIONS

**173.**—(1) Every person in charge of a motor vehicle who is directly or indirectly involved in an accident shall, if the accident results in personal injuries or in damage to property apparently exceeding \$400, report the accident forthwith to the nearest provincial or municipal police officer and furnish him with such information concerning the accident as may be required by the officer under subsection (3). R.S.O. 1970, c. 202, s. 139 (1); 1975, c. 78, s. 10; 1977, c. 54, s. 17. Duty to  
report  
accident

(2) Where such person is physically incapable of making a report and there is another occupant of the motor vehicle, such occupant shall make the report. Where  
person  
unable to  
report

(3) A police officer receiving a report of an accident, as required by this section, shall secure from the person making the report, or by other inquiries where necessary, such particulars of the accident, the persons involved, the extent of the personal injuries or property damage, if any, and such other information as may be necessary to complete a written report concerning the accident and shall forward such report to the Registrar within ten days of the accident. Duty of  
police  
officer

(4) The report of a police officer under subsection (3) shall be in such form as is approved by the Minister. R.S.O. 1970, c. 202, s. 139 (2-4). Report of  
police  
officer

**174.**—(1) Where an accident occurs on a highway, every person in charge of a vehicle or car of an electric railway that is directly or indirectly involved in the accident shall, Duty of  
person in  
charge of  
vehicle in  
case of  
accident

(a) remain at or immediately return to the scene of the accident;

(b) render all possible assistance; and

(c) upon request, give in writing to anyone sustaining loss or injury, or to any constable or other police officer or to any witness, his name and address, and also the name and address of the registered owner of such vehicle, and the number of the vehicle permit.

## Penalty

(2) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for a term of not more than six months, or to both, and in addition his licence or permit may be suspended for a period of not more than two years. R.S.O. 1970, c. 202, s. 140.

## Notification of damage to trees, fences, etc.

**175.** Every person who, as a result of an accident or otherwise, operates or drives a vehicle or leads, rides or drives an animal upon a highway and thereby damages any shrub, tree, pole, light, sign, sod or other property on the highway or a fence bordering the highway shall forthwith report such damage to a police officer or constable or to the Registrar. R.S.O. 1970, c. 202, s. 141.

## Reports by Crown attorneys and police officers

**176.**—(1) Every Crown attorney and police officer having knowledge of a fatal accident in which a motor vehicle is involved shall secure such particulars of the accident, the persons involved, and other information as may be necessary to complete a written report to the Registrar on the forms prescribed for that purpose, and shall transmit the report forthwith to the Registrar. R.S.O. 1970, c. 202, s. 142 (1); 1977, c. 54, s. 18.

## Reports re statistics and traffic control

(2) Every provincial or municipal official or employee, hospital, charitable institution, insurer or other person or organization shall furnish to the Registrar such reports and other information relating to motor vehicle accident statistics and traffic control generally as may be required by the regulations.

## Compensation may be allowed

(3) The Lieutenant Governor in Council, by regulation, may allow any person or organization making reports or furnishing information under this section such compensation for so doing as may be considered proper. R.S.O. 1970, c. 202, s. 142 (2, 3).

## Report of medical practitioner

**177.**—(1) Every legally qualified medical practitioner shall report to the Registrar the name, address and clinical condition of every person sixteen years of age or over attending upon the medical practitioner for medical services, who in the opinion of such medical practitioner is suffering from a condition that may make it dangerous for such person to operate a motor vehicle.

## No action for complying with subs. (1)

(2) No action shall be brought against a qualified medical practitioner for complying with this section.

## Reports privileged

(3) The report referred to in subsection (1) is privileged for the information of the Registrar only and shall not

be open for public inspection, and such report is inadmissible in evidence for any purpose in any trial except to prove compliance with subsection (1). R.S.O. 1970, c. 202, s. 143.

**178.**—(1) Every optometrist licensed under part V of the *Health Disciplines Act* shall report to the Registrar the name, address and clinical condition of every person sixteen years of age or over attending upon the optometrist for optometric services who, in the opinion of such optometrist, is suffering from an eye condition that may make it dangerous for such person to operate a motor vehicle.

Report of  
optometrist  
R.S.O. 1980,  
c. 196

(2) No action shall be brought against a qualified optometrist for complying with this section.

No action  
for  
compliance  
with subs. (1)

(3) The report referred to in subsection (1) is privileged for the information of the Registrar only and shall not be open for public inspection, and such report is inadmissible in evidence for any purpose in any trial except to prove compliance with subsection (1). R.S.O. 1970, c. 202, s. 144.

Reports  
privileged

**179.** The Registrar shall,

Duties of  
Registrar:

(a) prepare and supply to police officers and other persons and organizations blank forms approved by the Minister for accident and other reports which shall call for such particulars concerning accidents, the person involved, and the extent of the personal injuries and property damage, if any, resulting therefrom, and such other information as may be required by the regulations;

supply of  
accident  
report  
forms

(b) make such investigation of, and call for such written reports concerning, motor vehicle accidents, traffic conditions, and other matters, as he may consider necessary and proper, and for that purpose may require the assistance of any provincial or municipal police officer;

investiga-  
tion of  
accidents

(c) keep,

keeping  
of records

(i) a record of all motor vehicle accidents in Ontario, reported to him or concerning which he procures information,

(ii) a record of all convictions for offences under this Act or under the provisions of the *Criminal Code* (Canada) relating to driving on highways, reported to him under section 184, and of such other convictions as he may consider proper,

R.S.C. 1970,  
c. C-34

- (iii) a record of all drivers' licences and owners' permits issued, suspended, revoked, cancelled or revived under this Act,
- (iv) a record of all unsatisfied judgments rendered against persons holding owners' permits or drivers' licences under this Act, or non-residents reported to him pursuant to this Act,
- (v) an operating record of every driver, which record shall show all reported convictions of such driver for a contravention of any provision of any statute relating to the operation of motor vehicles, and all reported unsatisfied judgments against such person for any injury or damage caused by such person while operating a motor vehicle and all accidents in which the records of the Registrar indicate such driver has been involved, and such other information as the Registrar may consider proper, and
- (vi) such other records as he may be directed to keep by the Minister;

accident  
and traffic  
statistics

- (d) develop adequate uniform methods of accident and traffic statistics, and study accident causes and trends, traffic problems, and regulations;

annual  
report for  
Minister

- (e) prepare for the Minister an annual report showing the results of such reporting, collection, analysis and study, and embodying his recommendations for the prevention of motor vehicle accidents and the solution of traffic problems, and such report shall be printed and published forthwith upon completion. R.S.O. 1970, c. 202, s. 145.

## PART XIV

### PROCEDURE, ARRESTS AND PENALTIES

Time limit  
for  
instituting  
civil actions

**180.**—(1) Subject to subsections (2) and (3), no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of two years from the time when the damages were sustained. R.S.O. 1970, c. 202, s. 146 (1); 1975, c. 37, s. 1.

(2) Where death is caused, the action may be brought within the time limited by the *Family Law Reform Act*.

Limitation  
in case of  
death

R.S.O. 1980,  
c. 152

Action for  
damages

(3) Notwithstanding subsections (1) and (2), when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the counterclaim or third party proceedings. R.S.O. 1970, c. 202, s. 146 (2, 3).

**181.**—(1) Subject to subsection (2), the owner of a vehicle may be charged with and convicted of an offence under this Act or the regulations or any municipal by-law regulating traffic for which the driver of the vehicle is subject to be charged unless, at the time of the offence, the vehicle was in the possession of some person other than the owner without the owner's consent and on conviction the owner is liable to the penalty prescribed for the offence.

Vehicle  
owner  
may be  
convicted

(2) The owner of a vehicle, except when he is also the driver, shall not be convicted for a contravention of any of the provisions of subsection 90 (3) or (6) or of sections 109 to 145, 148, 151, 158 or 173 or any regulation or by-law made or passed thereunder or under subsection 90 (8) or of any of the provisions of any by-law passed under any Act regulating or prohibiting turns on a highway. 1980, c. 37, s. 20.

When  
owner not  
liable

**182.** Every person who contravenes any provision of this Act or of the regulations is guilty of an offence and the penalties imposed by or under the authority of this Act are recoverable under the *Provincial Offences Act*. R.S.O. 1970, c. 202, s. 148.

Recovery

R.S.O. 1980,  
c. 400

**183.** No penalty or imprisonment is a bar to the recovery of damages by the injured person. R.S.O. 1970, c. 202, s. 149.

Right to  
damages  
reserved

**184.**—(1) A judge, provincial judge or justice of the peace who makes a conviction for an offence under this Act or under any other Act of the Legislature or the Parliament of Canada or any regulation or order made under any of them committed by means of a motor vehicle, or for an offence under a municipal by-law regulating traffic on the highways, except convictions for offences for standing or parking or the clerk of the court in which the conviction is made, shall forthwith certify the conviction to the Registrar, setting out the name, address and description of the person convicted, the number of his driver's licence, the number of the permit of the motor vehicle with which the offence

Report on  
conviction  
to Registrar

was committed, the time the offence was committed and the provision of the Act, regulation, order or by-law contravened. R.S.O. 1970, c. 202, s. 150 (1).

Order for  
conditional  
discharge  
R.S.C. 1970,  
c. C-34

(2) Where a person pleads guilty to or is found guilty of an offence under the *Criminal Code* (Canada) referred to in subsection (1) and an order directing that the person be discharged is made under section 234, 236 or 662.1 of that Act, the judge, provincial judge or justice of the peace who makes the order or the clerk of the court in which the order is made shall forthwith certify the order to the Registrar, setting out the name, address and description of the person discharged by the order, the number of his driver's licence, the number of the permit of the motor vehicle with which the offence was committed, the time the offence was committed and the provision of the *Criminal Code* (Canada) contravened. 1976, c. 37, s. 19.

Evidence

(3) A copy of any writing, paper or document filed in the Ministry pursuant to this Act, or any statement containing information from the records required to be kept under this Act, purporting to be certified by the Registrar under the seal of the Ministry, shall be received in evidence in all courts without proof of the seal or signature and is *prima facie* evidence of the facts contained therein. R.S.O. 1970, c. 202, s. 150 (2); 1972, c. 1, s. 1.

Signature of  
Registrar

(4) An engraved, lithographed, printed or otherwise mechanically reproduced facsimile signature of the Registrar is sufficient authentication of any such copy or statement. R.S.O. 1970, c. 202, s. 150 (3).

Interpre-  
tation

**185.**—(1) In this section, “judge” means a judge, provincial judge or justice of the peace.

Return of  
suspended  
driver's  
licence to  
Registrar

(2) Subject to subsection (3), a person whose driver's licence is suspended by a judge or by operation of this Act shall immediately forward the driver's licence to the Registrar.

Judge to  
secure  
possession

(3) Where a judge makes a conviction and the driver's licence of the person convicted is suspended by the judge or by operation of this Act, the judge shall take the driver's licence and forward it to the Registrar. 1974, c. 123, s. 35, *part*.

Police  
officer,  
constable  
may secure  
possession

**186.**—(1) Where by or under the provisions of this Act a driver's licence is suspended and the person to whom the suspension applies refuses or fails to surrender his licence

to the Registrar forthwith, any police officer or constable may take possession of the licence and return it to the Registrar and the Registrar may direct any police officer or constable to take possession of the licence and return it to the Registrar.

(2) Every person who fails or refuses to surrender his driver's licence when required by a police officer or constable pursuant to subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$100. 1974, c. 123, s. 35, *part*. Penalty

**187.**—(1) If an owner of a motor vehicle is served with a summons to appear in a local municipality other than that in which he resides for an offence against this Act, and his defence is that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate, then and in that case only he may appear before a justice of the peace in the local municipality in which he resides and, in the same manner as if he were being tried for an offence against this Act, give evidence by himself and corroborated by the evidence of at least two other credible witnesses that neither he nor his motor vehicle was at the place of the alleged offence at the time such offence occurred, and that the summons must have been issued against him through an error of the informant as to the number on the official number plate. When owner may appear before justice of the peace

(2) The justice, if satisfied of the truth of such evidence, shall forthwith make out a certificate in the form set out in the Schedule to this Act and forward it by registered mail to the justice before whom the summons is returnable. Certificate

(3) The justice before whom the summons is returnable shall, upon receiving such certificate, thereupon dismiss the charge unless he has reason to believe that the testimony is untrue in whole or in part, in which case he may adjourn the case and again summon the defendant, who shall then be required to attend before him at the place and time mentioned in the summons. R.S.O. 1970, c. 202, s. 151. Dismissal or adjournment

**188.**—(1) Every person who contravenes any of the provisions of this Act or of any regulation is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not less than \$20 and not more than \$100. R.S.O. 1970, c. 202, s. 152. General penalty

(2) Notwithstanding subsection (1), every person, while a pedestrian or a person in a wheelchair, who contravenes any for pedestrian offences

provision of Part IX or any regulation made thereunder, is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not more than \$50. 1980, c. 37, s. 21.

Interpre-  
tation

**189.—**(1) In this section,

- (a) “designated” means designated by the regulations;
- (b) “driver improvement program” means a course of instruction for the improvement of the knowledge and attitudes as drivers of persons who hold licences to drive motor vehicles on a highway;
- (c) “justice” means a justice of the peace or a provincial judge;
- (d) “Ministry” means the Ministry of the Attorney General;
- (e) “prescribed” means prescribed by the regulations;
- (f) “regulations” means the regulations made under subsection (3). 1974, c. 66, s. 8, *part*; 1978, c. 90, s. 16.

Driver  
improvement  
program  
R.S.O. 1980,  
c. 400

(2) Notwithstanding anything in the *Provincial Offences Act*, where in a designated municipality a justice convicts a person of a prescribed offence and the person, on the recommendation of the justice, attends and successfully completes a driver improvement program conducted by the Ministry, the justice may impose a lesser fine than the fine otherwise provided for by this Act or may order that no fine shall be imposed upon the person in respect of the offence.

Regulations

(3) The Lieutenant Governor in Council may make regulations,

- (a) designating municipalities as areas in which driver improvement programs may be conducted by the Ministry in conjunction with the adjudication of offences under this Act;
- (b) prescribing the offences under this Act in conjunction with the adjudication of which driver improvement programs may be conducted by the Ministry. 1974, c. 66, s. 8, *part*.

Assisting  
officers

**190.—**(1) Every person called upon to assist a constable or officer appointed for carrying out the provisions of this Act in the arrest of a person suspected of having committed any offence mentioned in subsection (2) may assist if he knows that the person calling on him for assistance is a constable or officer appointed for carrying out the provisions of this

Act, and does not know that there are no reasonable grounds for the suspicion.

(2) Every constable, who, on reasonable and probable grounds, believes that a contravention of any of the provisions of subsection 9 (1); clause 12 (1) (a), (b), (c) or (d); subsection 13 (1); subsection 19 (2); subsection 30 (2) or (3); section 33; section 111, 148 or 160 or clause 174 (1) (a) has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed such contravention, may arrest such person without warrant whether such person is guilty or not.

Arrests by  
constable  
without  
warrant

(3) Every person may arrest without warrant any person whom he finds committing any such contravention.

Arresting  
on view

(4) A constable or officer appointed for carrying out the provisions of this Act, making an arrest without warrant, may detain the motor vehicle with which the offence was committed until the final disposition of any prosecution under this Act or under the *Criminal Code* (Canada), but the motor vehicle may be released on security for its production being given to the satisfaction of a justice of the peace or a provincial judge.

Detaining  
vehicle  
when arrest  
is made

R.S.C. 1970,  
c. C-34

(5) All costs and charges for the care and storage of a motor vehicle detained under subsection (4) are a lien upon the motor vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*.

Care and  
storage  
charges

R.S.O. 1980,  
c. 261

(6) A constable or officer appointed for carrying out the provisions of this Act, making an arrest without warrant, shall, with reasonable diligence, take the person arrested before a justice of the peace or provincial judge to be dealt with according to law. R.S.O. 1970, c. 202, s. 153.

Duty of  
person  
arresting  
without  
warrant

**191.**—(1) Upon the arraignment of a person accused of any of the offences mentioned in subsection 26 (1) or section 27 and before the court accepts the plea of such person, the clerk or registrar of the court shall orally give notice to such person in the following form or to the like effect:

Suspension  
of licence  
upon  
conviction

*"The Highway Traffic Act provides that upon conviction of the offence with which you are charged, in the circumstances indicated therein, your driver's licence shall be suspended for the period prescribed by statute"*  
1976, c. 37, s. 20.

(2) The suspension of a driver's licence by operation of this Act shall not be held to be invalid by reason of failure of

Idem

the clerk or registrar of the court to give the notice provided for in subsection (1). 1974, c. 123, s. 36, *part*.

Impounding  
motor vehicle

**192.**—(1) In the event of,

R.S.C. 1970,  
c. C-34

(a) a conviction under section 30 or 33 of this Act or section 234 or subsection 238 (3) of the *Criminal Code* (Canada);  
or

(b) a second conviction under subsection 233 (2) of the *Criminal Code* (Canada),

the provincial judge or judge may order that the motor vehicle driven by or under the care or control of the person convicted at the time of the commission of the offence or last offence, as the case may be, shall be seized, impounded and taken into custody of the law for a period of three months, provided the motor vehicle was at such time owned by or registered in the name of such person, or owned by or registered in the name of the husband, wife, parent or dependent child of such person. R.S.O. 1970, c. 202, s. 154 (1); 1973, c. 45, s. 30.

Second  
conviction

(2) Where there is a conviction under the section mentioned in clause (1) (b) and a previous conviction under a section mentioned in clause (1) (a), such first-mentioned conviction shall be deemed a second conviction. 1974, c. 123, s. 37.

Seizure,  
etc., of  
vehicle upon  
conviction  
of certain  
offences

(3) Where a person pleads guilty to any of the offences mentioned in subsection (1), the provisions of subsection (1) do not apply unless the person has been given notice,

(a) by a printed or written statement upon or accompanying the summons; or

(b) by the provincial judge or judge verbally before accepting the plea,

in the following form or to the like effect:

*"The Highway Traffic Act provides that upon conviction of the offence with which you are charged, in the circumstances indicated therein, the provincial judge or judge may order that the motor vehicle which was driven by you or under your care or control at the time of the commission of the offence shall be seized, impounded and taken into the custody of the law".*

Costs and  
charges for  
care and  
storage

(4) All costs and charges for the care and storage of the motor vehicle are a lien upon the motor vehicle, which may

be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*.

R.S.O. 1980,  
c. 261

(5) If the person so convicted or the owner gives sufficient security to the convicting provincial judge or justice of the peace, by bond, recognizance, or otherwise, that the motor vehicle shall not be operated upon a highway during such period of three months, the same may be delivered to the person so convicted or the owner thereof, and, if the motor vehicle is operated upon a highway during such period, it shall be deemed to be operated without a permit.

Release of  
vehicle on  
security  
given by  
owner

(6) A constable or an officer appointed for carrying out the provisions of this Act, upon the discovery of a motor vehicle apparently abandoned on or near a highway or of a motor vehicle without proper number plates, shall take the motor vehicle into his custody and may cause it to be taken to and stored in a suitable place and all costs and charges for removal, care or storage thereof are a lien upon the motor vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*. R.S.O. 1970, c. 202, s. 154 (3-6).

Abandoned  
vehicle

**193.** If a person to whom section 192 applies enters an appeal against his conviction and there is filed with the convicting provincial judge sufficient security for the production of the motor vehicle if the appeal should fail, section 192 does not apply unless the conviction is sustained on appeal. R.S.O. 1970, c. 202, s. 155.

Impounding  
of vehicle on  
appeal

**194.—**(1) The Minister may appoint one or more persons on the staff of the Ministry or any other ministry of the Government of Ontario as an officer or officers for the purpose of carrying out all or any of the provisions of this Act, and any person so appointed has authority to act as a constable throughout Ontario for such purpose. R.S.O. 1970, c. 202, s. 156 (1); 1972, c. 1, s. 1; 1980, c. 71, s. 22.

Appointment  
of officers for  
carrying out  
provisions  
of Act

(2) A person appointed under subsection (1) shall, while carrying out his duties under the appointment, have in his possession a certificate of his appointment under subsection (1) and shall produce such certificate upon request. R.S.O. 1970, c. 202, s. 156 (2).

Certificate of  
appointment

## PART XV

### AMENDMENTS

**195.** Section 9 is amended by adding thereto the following subsection:

s. 9,  
amended

Notice of  
new address

(2a) Where the name of a lessee is on a permit and the lessee changes his address from the address shown on the permit or from that filed under this subsection, he shall within six days send by registered mail to or file with the Ministry notice of his new address. 1980, c. 71, s. 4.

s. 12 (3),  
re-enacted

**196.** Subsection 12 (3) is repealed and the following substituted therefor:

Notice of  
termination  
of lease

(3) Where the name of the lessee is on a permit and the lease terminates, the lessor shall, within six days, forward to the Ministry notice thereof together with the permit number.

Property  
of the  
Crown

(4) Every number plate, evidence of validation and CAVR cab card furnished by the Ministry under this Act or pursuant to the Canadian Agreement on Vehicle Registration is the property of the Crown and shall be returned to the Ministry when required by the Ministry. 1980, c. 71, s. 6.

s. 102 (2),  
re-enacted

**197.**—(1) Subsection 102 (2) is repealed and the following substituted therefor:

Designation  
of  
“freeze-up”

(2) For the purposes of this section, an official of the Ministry authorized by the Minister in writing may designate the date on which a “freeze-up” shall commence and the date on which a “freeze-up” shall terminate and the part of the Province to which the designation shall apply. 1980, c. 71, s. 14 (1).

s. 102,  
amended

(2) The said section 102 is amended by adding thereto the following subsection:

R.S.O. 1980,  
c. 446 does  
not apply

(2a) A designation under subsection (2) is not a regulation within the meaning of the *Regulations Act*. 1980, c. 71, s. 14 (2).

Commence-  
ment of  
Part

**198.** This Part does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1980, c. 71, s. 23 (2).

SCHEDULE

(Section 187 (2) )

CERTIFICATE OF JUSTICE

I, (name of Justice), a Justice of the Peace in and for the .....  
of .....hereby certify:

1. That (name of defendant), of the .....  
of .....in the .....of .....  
(occupation), this day appeared before me and produced to me a summons  
issued by (name of Justice issuing summons), a Justice of the Peace in and  
for the .....of .....  
for an offence against the *Highway Traffic Act*, said to have been committed  
with respect to a car bearing the official number plate number .....  
for this year, the offence being alleged to have been committed on the .....  
of .....in the .....of .....  
on the .....day of .....

2. That (name of defendant) has deposed before me that neither he nor  
his motor vehicle was at such place on the .....  
day of ....., 19....., and that the summons must have  
been issued against him through an error of the informant as to the number  
on the official number plate, and his testimony in this respect has been  
corroborated by the testimony of two credible witnesses, namely (here  
insert the names of two witnesses).

3. The depositions of the defendant and of the witnesses referred to in  
paragraph 2 of this certificate are attached hereto.

4. That I am satisfied of the truth of the testimony given before me  
this day by (name of defendant and two witnesses), and give this certificate in  
pursuance of subsection 187 (2) of the *Highway Traffic Act*.

Dated at .....this .....day of  
....., 19.....  
.....J.P.

(NOTE.—Attach depositions of defendant and witnesses to this certificate.)



## CHAPTER 199

## Historical Parks Act

**1.** In this Act,Interpre-  
tation

(a) "Minister" means the Minister of Culture and Recreation;

(b) "public lands" means lands belonging to Her Majesty in right of Ontario, whether or not covered with water;

(c) "regulations" means the regulations made under this Act. 1972, c. 6, s. 1; O. Reg. 51/76.

**2.** The Minister is responsible for the administration of this Act. 1972, c. 6, s. 2.

Adminis-  
tration of  
Act

**3.** Land may be acquired under the *Ministry of Government Services Act* for the purposes of this Act. 1972, c. 6, s. 3; 1973, c. 2, s. 2.

Acquisition  
of land  
R.S.O. 1980,  
c. 279

**4.** The Lieutenant Governor in Council may set apart as a historical park any public lands in which there is an object, site or land of historical significance for the use by the people of Ontario in connection with the enjoyment of such historical object, site or land. 1972, c. 6, s. 4.

Designation  
of historical  
parks

**5.** Sections 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22 of the *Provincial Parks Act* apply with necessary modifications to historical parks. 1972, c. 6, s. 5.

Application  
of  
R.S.O. 1980,  
c. 401, ss. 6, 7,  
9-17, 19-22



## CHAPTER 200

### Homemakers and Nurses Services Act

**1. In this Act,**

Interpre-  
tation

- (a) "band", "council of a band", "member of a band" and "reserve" have the same meaning as in the *Indian Act* (Canada); R.S.C. 1970,  
c. I-6
- (b) "child" means a person under sixteen years of age;
- (c) "Director" means a Director appointed for the purposes of this Act;
- (d) "Minister" means the Minister of Community and Social Services;
- (e) "municipal welfare administrator" means a person appointed as such under this Act;
- (f) "municipality" means a city, town, village, township or improvement district and, where any municipality forms part of a county for the purpose of administering assistance under the *General Welfare Assistance Act*, means the county and not that municipality; R.S.O. 1980,  
c. 188
- (g) "physician" means a legally qualified medical practitioner;
- (h) "regional welfare administrator" means a person employed as such by the Ministry of Community and Social Services;
- (i) "regulations" means the regulations made under this Act;
- (j) "welfare administrator of a band" means a person appointed as such under this Act. R.S.O. 1970,  
c. 203, s. 1; 1972, c. 1, s. 19 (3); 1973, c. 143, s. 1.

**2. The Director shall,**

Duties of  
Director

- (a) exercise general supervision over the administration of this Act and the regulations; and

- (b) advise regional welfare administrators, municipal welfare administrators, welfare administrators of bands, and others as to the manner in which their duties under this Act are to be performed. R.S.O. 1970, c. 203, s. 2.

Appoint-  
ment of  
municipal  
welfare  
adminis-  
trator

**3.**—(1) The council of a municipality may, with the approval of the Minister, appoint a municipal welfare administrator for the purposes of this Act.

Appoint-  
ment of  
welfare  
adminis-  
trator of  
band

(2) The council of a band may, with the approval of the Minister, appoint a member of the band as the welfare administrator of the band for the purposes of this Act. R.S.O. 1970, c. 203, s. 3.

Power to  
take  
affidavits

**4.** The Director, every regional welfare administrator, every municipal welfare administrator, and every welfare administrator of a band is, in the performance of his duties under this Act, a commissioner for taking affidavits within the meaning of the *Commissioners for taking Affidavits Act*. R.S.O. 1970, c. 203, s. 4.

R.S.O. 1980,  
c. 75

Local  
adminis-  
tration

**5.** A municipality or the council of a band may employ homemakers or nurses, or both, for the purposes of this Act or may enter into an agreement with any person or organization for the furnishing of any services which may be provided under this Act for such persons as may be agreed upon. R.S.O. 1970, c. 203, s. 5.

Homemakers  
services

**6.** The services of a homemaker may be furnished under this Act,

- (a) for households in which there is a child who might otherwise be cared for in other than his own home during the absence, illness, convalescence or incapacity of his mother or other person in whose charge he is, where an adult is available to furnish any care that the child may require when the homemaker is not on duty; or
- (b) for a person who is elderly, handicapped, ill or convalescent in order that he may remain in his own home; or
- (c) for households in which the standard of house-keeping requires improvement to avoid familial or financial difficulties which are likely to cause or contribute to dependency on public assistance. 1973, c. 143, s. 2.

**7.** The services of a nurse may be furnished under this Act on a visitation basis in the home of a person who is elderly, handicapped, ill or convalescent, where a physician certifies that such services are necessary to enable the person to remain in his own home or to make possible his return to his home from a hospital or other institution. R.S.O. 1970, c. 203, s. 7. Nurses services

**8.** Application for the services of a homemaker or a nurse under this Act shall, where the person applying for the services resides, Application for services

- (a) in a municipality, be made to the municipal welfare administrator;
- (b) on the reserve of a band, be made to the welfare administrator of the band; or
- (c) in territory without municipal organization, be made to the regional welfare administrator of that territory. R.S.O. 1970, c. 203, s. 8.

**9.—(1)** Where the services of a homemaker or nurse are furnished under this Act, the person who has applied therefor shall pay the fees for such services for so long as and to the extent that his financial circumstances permit as determined by the regulations. R.S.O. 1970, c. 203, s. 9 (1). Payment for services

**(2)** Where the person's financial circumstances as determined by the regulations do not permit him to pay in full the fees for such services, they may be paid in whole or in part by the municipality or council of the band, as the case may be, in which case an amount determined by the regulations shall be reimbursed to the municipality or council of the band by the Province of Ontario in accordance with the regulations or, where the applicant resides in territory without municipal organization, the services may, with the approval of the regional welfare administrator, be paid for by the Province of Ontario in accordance with the regulations. R.S.O. 1970, c. 203, s. 9 (2); 1973, c. 143, s. 3. Idem

**10.** The provincial contribution to the cost of furnishing services under this Act for the grants and subsidies payable under the regulations and the expenses of the administration of this Act and the regulations are payable out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 203, s. 10; 1973, c. 143, s. 4. Moneys for purposes of Act

## Regulations

**11.** The Lieutenant Governor in Council may make regulations,

- (a) defining homemaking services and nursing services;
- (b) prescribing the qualifications of homemakers and nurses;
- (c) establishing courses of instruction for homemakers and providing for the granting of certificates to those who have satisfactorily completed the course of instruction;
- (d) providing for the payment of grants or subsidies and prescribing classes thereof, to persons, municipalities or other organizations or any class thereof towards the cost of courses of instruction for homemakers;
- (e) prescribing terms and conditions under which grants or subsidies or classes thereof shall be made under clause (d), the methods of determining the amounts of such grants or subsidies or classes thereof and providing for the manner in which such grants, subsidies or classes thereof shall be paid;
- (f) adding to or extending the conditions under which services may be furnished;
- (g) adding to or extending the classes of persons to whom services may be furnished;
- (h) prescribing the manner of computing the amount of reimbursement by the Province of Ontario to a municipality or the council of a band under section 9;
- (i) prescribing residence qualifications for applicants or recipients;
- (j) defining "residence", "reside" and similar expressions;
- (k) prescribing the conditions, terms and manner under which claims may be submitted by municipalities and councils of bands to the Province of Ontario for reimbursement of moneys under section 9;
- (l) prescribing maximum fees for services to which the Province of Ontario may contribute;

- (*m*) prescribing the maximum financial circumstances of applicants for or recipients of services to which the Province of Ontario may contribute to the cost;
- (*n*) providing for an requiring inspection of the records and accounts of municipalities and councils of bands that pertain to cases under this Act to which the Province of Ontario may contribute to the cost;
- (*o*) prescribing forms and providing for their use;
- (*p*) respecting any matter deemed necessary or advisable for the effective carrying out of the provisions of this Act.    R.S.O. 1970, c. 203, s. 11; 1973, c. 143, s. 5.



## CHAPTER 201

## Homes for Retarded Persons Act

## 1. In this Act,

Interpre-  
tation

- (a) "approved corporation" means a corporation approved under section 2;
- (b) "approved home" means a home for retarded persons approved under section 3;
- (c) "corporation" means a corporation without share capital having objects of a charitable nature,
- (i) to which Part III of the *Corporations Act* R.S.O. 1980, c. 95 applies, or
  - (ii) that is incorporated under a general or special Act of the Parliament of Canada;
- (d) "home for retarded persons" means all or any part of a building maintained and operated by an approved corporation for the residential accommodation of retarded persons, but does not include,
- (i) a children's institution under the *Children's Institutions Act*, R.S.O. 1980, c. 67
  - (ii) a charitable institution under the *Charitable Institutions Act*, R.S.O. 1980, c. 64
  - (iii) a children's residence that is licensed under the *Children's Residential Services Act*, R.S.O. 1980, c. 71
  - (iv) a home, institution or other place of accommodation provided by a children's aid society under the *Child Welfare Act*, R.S.O. 1980, c. 66
  - (v) a day nursery established and operated under the *Day Nurseries Act* or any predecessor thereof, R.S.O. 1980, c. 111
  - (vi) a psychiatric facility under the *Mental Health Act*, R.S.O. 1980, c. 262

R.S.O. 1980,  
c. 389

(vii) a private hospital under the *Private Hospitals Act*,

R.S.O. 1980,  
c. 69

(viii) a children's mental health centre under the *Children's Mental Health Services Act*,

R.S.O. 1980,  
c. 410

(ix) a hospital under the *Public Hospitals Act*,

R.S.O. 1980,  
c. 463

(x) a sanatorium under the *Sanatoria for Consumptives Act*;

(e) "Minister" means the Minister of Community and Social Services;

(f) "provincial supervisor" means a child welfare supervisor or a welfare institutions supervisor, and includes any other employee of the Ministry of Community and Social Services who is designated by the Minister as a provincial supervisor for the purposes of this Act;

(g) "regulations" means the regulations made under this Act;

(h) "residential accommodation" means accommodation for the board and lodging of retarded persons;

(i) "retarded person" means a person in whom there is a condition of arrested or incomplete development of the mind as verified by objective psychological or medical findings, and whose best interests would be served by admission to an approved home.  
R.S.O. 1970, c. 204, s. 1; 1973, c. 76, s. 1.

Approval of  
corporations

**2.** Where the Minister is satisfied that any corporation is, with financial assistance under this Act, financially capable of establishing, maintaining and operating a home for retarded persons and that its affairs are carried on under competent management in good faith for charitable purposes, he may approve such corporation for the purposes of this Act. 1971, c. 50, s. 45 (1), *part*; 1973, c. 76, s. 2.

Approval  
of homes

**3.—(1)** Where the Minister is satisfied that all or any part of a building or buildings is suitable for providing accommodation as a home for retarded persons in accordance with this Act and the regulations, he may approve such building, buildings or part thereof, as the case may be, as a home for retarded persons for the maintenance and operation of which assistance may be given under this Act. 1971, c. 50, s. 45 (1), *part*; 1973, c. 76, s. 3 (1).

(2) An approval given under subsection (1) or under section 2 may take effect on any date fixed by the Minister that is prior to the date on which the approval is given, but in no case shall the date upon which the approval under subsection (1) takes effect precede the date that the approval given under section 2 to the corporation maintaining and operating the home for retarded persons takes effect. 1973, c. 76, s. 3 (2).

Effective  
date of  
approval

**4.—(1)** No approved corporation shall,

Prohibitions

- (a) change its corporate name under the *Corporations Act* or the name of any approved home maintained and operated by it without the approval in writing of the Minister;
- (b) erect a new building to be maintained and operated as a home for retarded persons until the site and plans thereof have been approved in writing by the Minister or erect an addition to an existing building to be maintained and operated as a home for retarded persons until the plans thereof are approved in writing by the Minister;
- (c) purchase or otherwise acquire any building, or any part thereof, to be maintained and operated as a home for retarded persons without the approval in writing of the Minister; or
- (d) change the site or use of, sell or otherwise dispose of any part of, or structurally alter, any approved home in respect of which the approved corporation has received payment of a grant under section 5 or 6 without the approval in writing of the Minister. R.S.O. 1970, c. 204, s. 4 (1); 1973, c. 76, s. 4.

R.S.O. 1980,  
c. 95

(2) No by-law of an approved corporation with respect to an approved home has effect until it is approved in writing by the Minister. R.S.O. 1970, c. 204, s. 4 (2).

By-laws

**5.** When the site and plans of a new building or the plans of an addition to an existing building to be maintained and operated or maintained and operated, as the case may be, as a home for retarded persons have been approved by the Minister under clause 4 (1) (b), the Minister may, out of moneys appropriated therefor by the Legislature, direct payment to the approved corporation erecting the new building or the

Construction  
grants

addition of an amount equal to the cost to the approved corporation of the new home for retarded persons, computed in accordance with the regulations, but not exceeding an amount based upon the bed capacity of the new home for retarded persons, at the rate of \$5,000 per bed or such greater amount per bed as the regulations prescribe. 1973, c. 76, s. 5, *part*.

Acquisition  
grants

**6. Where,**

- (a) the acquisition or structural alteration of all or any part of a building to be maintained and operated as a home for retarded persons has been approved by the Minister under clause 4 (1) (c) or (d), as the case may be; or
- (b) the Minister has approved the renovation of all or any part of a building maintained and operated or to be maintained and operated as a home for retarded persons,

the Minister may, out of the moneys that are appropriated therefor by the Legislature, direct payment to the approved corporation acquiring the building or part thereof or operating and maintaining or proposing to operate and maintain the home, as the case may be, of an amount equal to the cost to the approved corporation of the acquisition, alteration or renovation, as the case may be, computed in accordance with the regulations, but not exceeding an amount based upon the bed capacity of the home at the rate of \$1,200 per bed or such greater amount as the regulations prescribe. 1973, c. 76, s. 5, *part*.

Grants for  
residential  
accommoda-  
tion only

**7.** In computing the cost to an approved corporation of erecting a new building or an addition to an existing building under section 5 or of acquiring a building under section 6, the computation shall include only expenditures directly referable to the establishment or provision of residential accommodation for retarded persons. R.S.O. 1970, c. 204, s. 7; 1973, c. 76, s. 6.

Maintenance  
and  
operating  
grants

**8.** There shall be paid to an approved corporation out of the moneys appropriated therefor by the Legislature an amount equal to 80 per cent or such higher percentage as the regulations prescribe of the cost computed in accordance with the regulations of,

- (a) residential accommodation provided in an approved home that is maintained and operated by the corporation; or

- (b) residential services approved by the Director provided by or on behalf of the corporation in other than an approved home,

for retarded persons who are not wards of the Crown or wards of a children's aid society under the *Child Welfare Act*. 1973, c. 76, s. 7. R.S.O. 1980, c. 66

**9.**—(1) Every approved home, its books of account and any other records shall be open at all reasonable times for inspection by a provincial supervisor. Inspection

(2) Every premises that is not an approved home where residential services are provided for retarded persons placed therein by an approved corporation shall be open at all reasonable times for inspection by a provincial supervisor. 1973, c. 76, s. 8. Idem

(3) A provincial supervisor shall be given access to any approved corporation's books of account and other records that pertain to its approved homes and he may inspect such books of account and other records at any time. R.S.O. 1970, c. 204, s. 9 (2). Idem, approved corporations

**10.**—(1) Subject to this section, any approval given under this Act may be suspended or revoked by the Minister if, Suspension and revocation of approvals

- (a) any director, officer or servant of the approved corporation has contravened or knowingly permitted any person under his control and direction to contravene any provision of this Act or the regulations and such contravention occurred through lack of competence or with intent to evade the requirements of such provisions; or

- (b) the approval would be refused if application were being made for it in the first instance. 1971, c. 50, s. 45 (2), *part*; 1973, c. 76, s. 9 (1).

(2) Subject to subsection (6) and except where an approval is suspended or revoked with the consent of the approved corporation, before suspending or revoking an approval given under this Act, the Minister shall cause a hearing as to whether the approval should be suspended or revoked to be held by a person, other than a person in the employment of the Ministry of Community and Social Services, appointed by the Minister. 1971, c. 50, s. 45 (2), *part*; 1973, c. 76, s. 9 (2). Hearing

(3) Sections 4 to 16 and 21 to 24 of the *Statutory Powers Procedure Act* apply with respect to a hearing under this section. Application of R.S.O. 1980, c. 484

Report to  
Minister

(4) The person conducting a hearing under this section shall, at the conclusion of the hearing, make a report to the Minister setting out his findings of fact and any information or knowledge used by him in making his recommendations, any conclusions of law he has arrived at relevant to his recommendations, and his recommendations as to the suspension or revocation of the approval, and shall send a copy of his report to the persons affected. 1971, c. 50, s. 45 (2), *part*.

Decision of  
Minister

(5) After considering a report made to him under this section, the Minister may thereupon suspend or revoke the approval to which the report relates and shall give notice of his decision to the persons affected, specifying the reasons therefor. 1971, c. 50, s. 45 (2), *part*; 1973, c. 76, s. 9 (3).

Provisional  
suspension  
of approval

(6) Notwithstanding anything in this section, the Minister, by notice to the persons affected and without a hearing, may provisionally suspend an approval given under this Act where the continuation of operations in accordance with the approval is, in the Minister's opinion, an immediate threat to the public interest and the Minister so states in such notice giving his reasons therefor, and thereafter the Minister shall cause a hearing to be held and the provisions of subsections (2) to (5) apply. 1971, c. 50, s. 45 (2), *part*.

Regulations

**11.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing rules governing approved homes and the conduct of the persons residing therein and the staffs thereof;
- (b) governing the admission of retarded persons to approved homes and the kinds of services that are to be provided therein;
- (c) prescribing the qualifications and duties of the members of the staffs of approved homes;
- (d) requiring and prescribing medical and other related or ancillary services that are to be provided for the persons residing in approved homes;
- (e) prescribing or defining residential services and classes thereof provided in other than approved homes and the terms and conditions upon which such services or any class thereof shall be provided for the purposes of section 8;

- (f) governing applications by approved corporations for payments under this Act, and prescribing the method, time and manner of payment;
- (g) prescribing a greater amount per bed for the purposes of section 5 or 6 and prescribing a higher percentage for the purposes of section 8;
- (h) prescribing the manner of computing the costs to approved corporations, and prescribing classes of payments, for the purposes of sections 5, 6 and 8;
- (i) prescribing the records to be kept by approved corporations and approved homes, the claims and returns to be made to the Minister by approved corporations and the method, time and manner in which such claims and returns shall be made, and providing penalties for late claims or returns;
- (j) providing for the recovery by an approved corporation or Ontario from the person or persons in whose charge a retarded person is or from the estate of such person or persons of any amount paid by the approved corporation or by Ontario to the approved corporation for the cost of the residential accommodation of the person in an approved home, and prescribing the circumstances and the manner in which any such recovery may be made;
- (k) prescribing additional duties of provincial supervisors;
- (l) prescribing forms and providing for their use. R.S.O. 1970, c. 204, s. 11; 1971, c. 50, s. 45 (3); 1973, c. 76, s. 10.



## CHAPTER 202

## Homes for Special Care Act

## 1. In this Act,

Interpre-  
tation

- (a) "home for special care" means a home for the care of persons requiring nursing, residential or sheltered care;
- (b) "Minister" means the Minister of Health;
- (c) "regulations" means the regulations under this Act;
- (d) "resident" means a person received and lodged in a home for special care under this Act. R.S.O. 1970, c. 205, s. 1.

2. The Minister is responsible for the administration of this Act. R.S.O. 1970, c. 205, s. 2.

Administra-  
tion

3.—(1) The Lieutenant Governor in Council may establish one or more homes for special care.

Establish-  
ment of  
homes

(2) The Lieutenant Governor in Council may designate the name by which any home for special care established under subsection (1) shall be known. R.S.O. 1970, c. 205, s. 3.

Idem

4.—(1) The Lieutenant Governor in Council may approve all or any part of any institution, building or other premises or place as a home for special care.

Approval  
of homes

(2) The Minister may make grants out of moneys that are appropriated therefor by the Legislature to homes for special care that he has approved under subsection (1) in such manner, in such amounts and under such conditions as are prescribed by the regulations. R.S.O. 1970, c. 205, s. 4.

Aid to  
approved  
homes

5.—(1) The Minister may license homes for special care that have not been established under section 3 or have not been approved under section 4, and he may renew or cancel such licences upon such terms and conditions as the regulations prescribe.

Licensing  
of homes

(2) The fee for the licence mentioned in subsection (1) and the renewal thereof shall be that prescribed by the regulations.

Fee

Payments  
for care  
and main-  
tenance

(3) The Minister may pay such amounts for the care and maintenance of residents in homes licensed under this section as are prescribed by the regulations. R.S.O. 1970, c. 205, s. 5.

R.S.O. 1980,  
c. 262, may  
be made  
applicable  
to homes

6. The Lieutenant Governor in Council may designate any provision of the *Mental Health Act* or of the regulations thereunder as being applicable to any home for special care. R.S.O. 1970, c. 205, s. 6.

Regulations

7. The Lieutenant Governor in Council may make regulations with respect to homes for special care for,

- (a) their construction, location, alteration, equipment, safety, maintenance and repair;
- (b) their inspection, control, government, management, conduct, operation and use;
- (c) their administrators and other officers and staffs and the powers and duties thereof;
- (d) their classifications, grades and standards, and the classification of residents, and regulating and prescribing the rates and charges for residents, and prescribing the liability therefor;
- (e) the admission, treatment, care, conduct, control, custody and discharge of residents or of any class of residents;
- (f) prescribing the classes of grants to homes approved under section 4 and the methods of determining the amounts of grants, and providing for the manner and times of payment and the suspension and withholding of grants and for the making of deductions from grants;
- (g) providing for the licensing of homes for special care under section 5 and the renewal and cancellation thereof, and prescribing the fees payable for such licences;
- (h) prescribing the amounts to be paid by the Minister for the care and maintenance of residents in homes for special care licensed under section 5;
- (i) any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 205, s. 7.

**8.** The expenses of the administration of this Act shall <sup>Expenses</sup> be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 205, s. 8.



## CHAPTER 203

## Homes for the Aged and Rest Homes Act

## 1. In this Act,

Interpre-  
tation

- (a) "band", "council of the band" and "reserve" have the same meaning as in the *Indian Act* (Canada); R.S.C. 1970, c. I-6
- (b) "Director" means a Director appointed as such for the purposes of this Act;
- (c) "home" means a home for the aged established or maintained under this Act or a rest home established and maintained under this Act;
- (d) "joint home" means a home of two or more municipalities or councils of bands, as the case may be;
- (e) "last revised assessment rolls as equalized" means last revised assessment rolls as revised and equalized by the Ministry of Revenue;
- (f) "Minister" means the Minister of Community and Social Services;
- (g) "municipality" means a county, city or separated town, but in a territorial district "municipality" means a city, town, village or township;
- (h) "provincial supervisor" means a regional welfare administrator, a homes for the aged branch consultant or supervisor, a field worker or any other employee of the Ministry of Community and Social Services who is designated as such for the purposes of this Act;
- (i) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 206, s. 1; 1972, c. 1, s. 22 (1); 1972, c. 148, s. 1; 1973, c. 27, s. 1.

2.—(1) The Director shall exercise general supervision over the administration of this Act and the regulations and carry out such other duties as are assigned to him by this Act or the regulations. R.S.O. 1970, c. 206, s. 2 (1). Director's function

Absence,  
etc.

(2) Where the Director is absent or there is a vacancy in the office, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry of Community and Social Services as the Minister designates. R.S.O. 1970, c. 206, s. 2 (2); 1972, c. 1, s. 19 (3).

Delegation  
of functions

(3) The Director, with the consent in writing of the Deputy Minister of Community and Social Services, may authorize any employee or class of employee of the Ministry of Community and Social Services to exercise and discharge any of the powers conferred or the duties imposed upon the Director under this Act or the regulations. R.S.O. 1970, c. 206, s. 2 (3); 1972, c. 1, s. 19 (3).

Homes for  
the aged not  
in districts,  
establish-  
ment, etc.

3.—(1) Except as otherwise provided in subsection (2) or in section 7, every municipality not in a territorial district shall establish and maintain a home for the aged.

Idem,  
joint homes  
for the aged

(2) In lieu of establishing separate homes, the councils of two or more such municipalities may, with the approval in writing of the Minister, enter into an agreement to establish and maintain a joint home for the aged.

Idem,  
rest homes

(3) Except as otherwise provided in subsection (4) or in section 7, any municipality not in a territorial district may, and any town, village or township that forms part of a county for municipal purposes may, with the prior approval of the council of the county, establish and maintain a rest home.

Idem,  
joint rest  
homes

(4) In lieu of establishing separate rest homes, the councils of two or more municipalities not in a territorial district or the councils of any two or more towns, villages or townships that form part of a county for municipal purposes may, with the approval in writing of the Minister, enter into an agreement to establish and maintain a joint rest home. R.S.O. 1970, c. 206, s. 3.

Homes  
and joint  
homes in  
territorial  
districts

4. A municipality that has a population of more than 15,000 and that is located in a territorial district may, with the written approval of the Minister, establish and maintain a home, or the council of any such municipality and the councils of one or more other municipalities in the same territorial district may, with the approval in writing of the Minister, enter into an agreement to establish and maintain a joint home. R.S.O. 1970, c. 206, s. 4.

Homes and  
joint homes,  
establish-  
ment by  
Indian  
bands

5. The council of the band may,

(a) establish and maintain a home; or

- (b) enter into an agreement with the councils of one or more other bands to establish and maintain a joint home,

with the approval in writing of the Minister. R.S.O. 1970, c. 206, s. 5.

**6.**—(1) When a by-law authorizing the establishment and maintenance of a home under a board of management has been passed by a majority of the municipalities in a territorial district, all of the municipalities in the district shall contribute to its establishment and maintenance.

Homes in districts; establishment, etc.

(2) When a by-law under subsection (1) is passed, a certified copy thereof shall be transmitted forthwith to the Minister.

Transmission of by-law

(3) Where a home or a joint home is established and maintained under section 4, the municipality or municipalities that establish and maintain it shall be deemed not to be within the territorial district for the purposes of this section and sections 24 to 26. R.S.O. 1970, c. 206, s. 6.

Where a home established under s. 4

**7.** Notwithstanding sections 3, 4 and 6, the council of any municipality not having a home and not participating in a joint home may, with the approval in writing of the Minister, enter into an agreement with the council of a municipality having a home, the councils of the municipalities having a joint home, or the board of a home providing for admission thereto and maintenance therein of residents of the municipality. R.S.O. 1970, c. 206, s. 7.

Provision for admission to and care in existing home

**8.**—(1) The council of a municipality establishing and maintaining a home or the councils of the municipalities establishing and maintaining a joint home shall appoint from among the members of the council or councils, as the case may be, a committee of management for the home or joint home. R.S.O. 1970, c. 206, s. 8 (1); 1973, c. 27, s. 2 (1).

Committee of management, appointment

(2) The composition of a committee of management and the qualifications and term of office of the members thereof shall be as prescribed by the regulations. 1973, c. 27, s. 2 (2).

composition

(3) Where a home is established and maintained by a city having a board of control, the members of the committee of management shall be appointed on the recommendation of the board of control, and section 71 of the *Municipal Act* applies in respect of the home.

Recommendation of board of control

R.S.O. 1980, c. 302

(4) Notwithstanding subsections (1) and (2), where the establishment of a rest home has been approved by the county council, there shall be a committee of management for the rest home. R.S.O. 1970, c. 206, s. 8 (3, 4).

Rest home approved by county must have committee of management

Board of  
management  
established

**9.**—(1) A board of management shall be established which shall be a corporation for any home established and maintained by a band under section 5 or in a territorial district under section 6. 1973, c. 27, s. 3 (1).

composition

(2) The composition of each board of management and the qualifications and term of office of the members, including appointments to those boards by councils of municipalities, shall be as prescribed by the regulations. 1973, c. 27, s. 3 (2).

Idem

(3) A home established under section 5 or 6 shall be vested in the board and the board shall have charge thereof. 1972, c. 148, s. 2.

R.S.O. 1980,  
c. 95 does  
not apply

(4) The *Corporations Act* does not apply to the board. R.S.O. 1970, c. 206, s. 9 (5).

Homes  
established  
under  
R.S.O. 1980,  
c. 273, s. 10

**10.** A board of management appointed under section 9 may by lease or agreement entered into with the Minister maintain and operate a home established in the territorial district of the board by the Minister under section 10 of the *Ministry of Community and Social Services Act*, subject to the provisions of this Act and the regulations and upon such terms and conditions as may be agreed upon. 1972, c. 148, s. 3.

Trust  
agreements

**11.** Where a municipality that establishes and maintains a home or joint home, or the board of management of a home established and maintained under section 5 or 6 or a home maintained and operated under an agreement with the Minister pursuant to section 10 enters into an agreement approved by the Director with a resident of the home to receive, hold and administer real or personal property of the resident in trust for certain purposes, the municipality or board may receive, hold and administer the property for the purposes of the agreement. R.S.O. 1970, c. 206, s. 10; 1972, c. 148, s. 4; 1973, c. 27, s. 4.

Adminis-  
trator,  
appointment

**12.**—(1) Subject to subsection (2), the council of a municipality that establishes and maintains a home or the councils of the municipalities that establish and maintain a joint home or the board of management of a home shall, with the approval of the Lieutenant Governor in Council, appoint an administrator for the home or joint home who has, in the opinion of the Minister, served satisfactorily as an administrator for a period of at least six months and has successfully completed a course of instruction that is approved by the Minister.

(2) The council of a municipality that establishes and maintains a home or the councils of the municipalities that establish and maintain a joint home or the board of management of a home may appoint a person to act temporarily as administrator of the home or joint home for a period not exceeding one year. Temporary appointment

(3) The council of a municipality that establishes and maintains a home, or the councils of the municipalities that establish and maintain a joint home or the board of management of a home may appoint such staff as the administrator requires for the carrying out of his duties. R.S.O. 1970, c. 206, s. 11 (1-3). Staff, appointment

(4) The council of a municipality that establishes and maintains a home or the councils of the municipalities that establish and maintain a joint home or the board of management of a home shall, with the approval of the Minister, appoint a legally qualified medical practitioner as the physician for the home or joint home who is responsible for the medical, paramedical and nursing care and services provided to the residents thereof. R.S.O. 1970, c. 206, s. 11 (4). Medical care

(5) On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted therefor: Commencement

(3) The council of a municipality that establishes and maintains a home, or the councils of the municipalities that establish and maintain a joint home or the board of management of a home shall appoint such staff as the regulations prescribe for the proper care and well-being of the residents. 1972, c. 62, s. 2 (1). Staff, appointment

**13.** Before selecting or acquiring a site or erecting or acquiring a building for use as a home or joint home, the municipality or band establishing the home or the municipalities, or bands establishing a joint home or the board of management of a home, as the case may be, shall, Evaluation and survey

(a) evaluate the site in accordance with the regulations to determine whether it will best serve the programs of the home and the best interests of the prospective residents; and

(b) conduct a survey of the community and review of population requirements in accordance with the regulations,

and submit a report thereof to the Minister. 1971, c. 99, s. 1; 1973, c. 27, s. 5.

**14.—(1)** A building shall not be acquired, erected or altered for use as a home or joint home until the need for the Site and plans, etc., to be approved

home or joint home has been established to the satisfaction of the Minister and,

- (a) the site, selected and evaluated in accordance with the regulations; and
- (b) the plans therefor developed and prepared in accordance with the regulations,

have been approved in writing by the Minister. 1971, c. 99, s. 2.

Idem

(2) There shall be no change in site and no sale or disposal of any part thereof and no alteration to or in any building or to the grounds of the home or joint home without the approval of the Minister. R.S.O. 1970, c. 206, s. 12 (2).

Agreement  
for con-  
necting  
sewerage  
system

**15.**—(1) The council of a municipality having a home, the councils of the municipalities participating in a joint home or the board of management of a home may enter into an agreement with the council of any municipality for connecting the home or joint home with the sewerage system of such municipality. R.S.O. 1970, c. 206, s. 13 (1).

Agreement  
for supply-  
ing electric  
power or  
water

(2) The council of a municipality having a home, the councils of the municipalities participating in a joint home or the board of management of a home may enter into an agreement with Ontario Hydro or with the council of any municipality or person owning or operating a waterworks system, or works for the production and supply of electricity for light, heat or power, for the supply of water for domestic purposes and for fire protection or of electricity for light, heat or power purposes at the home or joint home. R.S.O. 1970, c. 206, s. 13 (2); 1973, c. 57, s. 19.

Power  
to carry  
necessary  
works over  
intervening  
lands

(3) For the purpose of connecting such home or joint home with any such system or works, any lands or highways may be entered upon, passed over or dug up, sewers constructed, pipes laid down, poles or wires put in place and all work done in or upon such lands and highways as may be necessary, due compensation being made to the owners thereof as provided by the *Municipal Act*. R.S.O. 1970, c. 206, s. 13 (3).

R.S.O. 1980,  
c. 302

Debentures

**16.** Subject to the approval of the Ontario Municipal Board and without the assent of the electors, a municipality may issue debentures for raising such sums as may be necessary for the purchase of a site or for the erection of buildings for a home or joint home, or for the purchase of land to be used in connection therewith, or for any addition to or improvement of such buildings, or for the purpose of any system or works authorized by section 15. R.S.O. 1970, c. 206, s. 14.

**17.** The council of a municipality having a home, the councils of the municipalities participating in a joint home or the board of management of a home shall provide in accordance with the regulations such space, equipment and materials as will contribute to the well-being of the residents of the home or joint home and as will enable the residents to participate in recreation, handicrafts, continuous learning and similar activities, both within and outside the home or joint home. 1972, c. 62, s. 3.

Facilities for recreational, etc., activities

**18.—(1)** Any person,

- (a) who is over the age of sixty years; or
- (b) who is under the age of sixty years and who, because of such special circumstances as are prescribed by the regulations, cannot be cared for adequately elsewhere,

Admission to home for aged

and who is eligible for admission in accordance with the regulations, may be admitted to and maintained in a home for the aged or joint home for the aged by the committee of management or board of management, as the case may be, in accordance with the procedures prescribed by the regulations.

(2) Any person,

- (a) who is eighteen or more years of age and who, in the opinion of two legally qualified medical practitioners, one of whom is the physician of the rest home, is in need of long-term maintenance and supervision as prescribed by the regulations; or
- (b) who is under eighteen years of age and who, because of special circumstances, cannot be cared for adequately elsewhere,

Idem, rest homes

and who is eligible for admission in accordance with the regulations, may be admitted to and maintained in a rest home or joint rest home by the committee of management or the board of management, as the case may be, in accordance with the procedures prescribed by the regulations. 1972, c. 62, s. 4.

**19.** Where, in the opinions of the administrator and physician of a home or joint home, a resident of the home ceases to be eligible to be maintained and cared for therein or where it is in the best interests of such resident, the resident may be discharged from the home in accordance with the regulations. 1972, c. 62, s. 5.

Discharge of residents from homes

**20.—(1)** A municipality maintaining a home, the municipalities maintaining a joint home, or the board of manage-

Residential services provided

ment of a home, as the case may be, may, upon recommendation of the administrator of the home, provide residential services approved by the Director in other than a home or joint home for any person admissible to the home or joint home. 1973, c. 27, s. 6 (1).

Province  
to share  
cost

(2) There shall be paid monthly to the municipality, municipalities or the board of management, as the case may be, providing residential services under subsection (1), out of moneys appropriated therefor by the Legislature, an amount computed in the manner prescribed by the regulations towards the cost of providing the services. 1973, c. 27, s. 6 (2).

Person  
may be  
transferred

(3) A person receiving residential services in other than a home or joint home under subsection (1) may be transferred to the home or joint home at any time. R.S.O. 1970, c. 206, s. 19 (3); 1973, c. 27, s. 6 (3).

Person  
considered  
a resident  
of the home

(4) A person receiving residential services in other than a home or joint home under subsection (1) shall be deemed a resident of the home or joint home, and section 18 applies with necessary modifications in determining his eligibility for the residential services. 1973, c. 27, s. 6 (4).

In cities  
without  
homes

(5) The council of a city not having a home and not participating in a joint home may appoint one or more persons to administer this section for the city until such time as it has a home or participates in a joint home. R.S.O. 1970, c. 206, s. 19 (5).

Inspection  
of records

**21.**—(1) Every home and its books and records shall be open at all reasonable times to inspection by the Director or by a provincial supervisor. R.S.O. 1970, c. 206, s. 20; 1972, c. 62, s. 7.

Inspection  
of premises

(2) Every premises that is not a home or joint home where residential services are provided or where residential services are to be provided in accordance with section 20 shall be open at all reasonable times for inspection by the Director, a provincial supervisor or by a person appointed by the council of the municipality or board of management providing the services. 1973, c. 27, s. 7.

Affidavits

**22.** A public welfare administrator or public welfare commissioner of a county, city, separated town, town, village, township or band, or any of his assistants authorized by the municipal council or the council of the band, as the case may be, and a regional welfare administrator of the Ministry

of Community and Social Services and any other employee of the Ministry of Community and Social Services designated by the Minister under this Act has power to take affidavits and statutory declarations for the purpose of this Act in the same manner and to the same extent as a commissioner for taking affidavits in Ontario. R.S.O. 1970, c. 206, s. 21; 1973, c. 27, s. 8.

**23.** A resident of a home or joint home is responsible for the payment of all or such part of the cost of his maintenance therein as the regulations prescribe. 1972, c. 62, s. 8. Responsi-  
bility for  
payment

**24.—(1)** For the purposes of this Act, the Ministry of Revenue shall in each year revise and equalize the assessment rolls of the municipalities in each territorial district and in making the equalization of assessment there shall be added where applicable to the valuation of each municipality the amounts credited to the municipality under section 160 of the *Municipal Act*. 1971, c. 99, s. 3 (1), *part*; 1972, c. 1, s. 22 (2). Assessment  
to be  
revised and  
equalized  
R.S.O. 1980,  
c. 302

(2) Any municipality in a district that is not satisfied with the last revised assessment of any municipality in the district as equalized for the purposes of this Act, may appeal by notice in writing to the Ontario Municipal Board from the decision of the Ministry of Revenue as varied by any amounts added in accordance with subsection (1) at any time within thirty days after the mailing of the equalized report to the appealing municipality by the Ministry of Revenue. 1971, c. 99, s. 3 (1), *part*; 1972, c. 1, s. 22 (2). Appeal

(3) Every report of an equalization made for the purposes of this Act shall set out the time within which an appeal may be made to the Ontario Municipal Board with respect to such equalization. 1971, c. 99, s. 3 (1), *part*. Idem

(4) The cost of maintaining a home established under section 6 or maintained and operated under an agreement with the Minister pursuant to section 10 shall be defrayed in each year by the municipalities in the territorial district in proportion to the amounts of their assessments according to their assessment rolls as revised and equalized in the immediately preceding year. R.S.O. 1970, c. 206, s. 23 (1); 1971, c. 99, s. 3 (1) *part*; 1972, c. 148, s. 5 (1). Maintenance  
of homes in  
districts

(5) The board of management of a home established under section 6 or maintained and operated under an agreement Estimates  
and appor-  
tionment

with the Minister pursuant to section 10 shall in each year apportion the amount that it estimates will be required to defray its expenditures for that year among the municipalities in the district, and shall on or before the 25th day of February notify the clerk of each such municipality of the amount to be provided by that municipality. R.S.O. 1970, c. 206, s. 23 (3); 1972, c. 148, s. 5 (2).

Operating  
reserve

(6) In preparing the estimates, the board may provide for a reserve for working funds, but the amount of the reserve in a year shall not exceed 15 per cent of the total estimates of the board for the year.

Levy and  
collection

(7) Each such municipality shall include the amount required to be provided by it under this section in its estimates for the then current year and shall levy and collect the amount in like manner as taxes and pay the amount to the board of management on demand. R.S.O. 1970, c. 206, s. 23 (4, 5).

Where  
assessments  
not equalized  
in time

(8) Where in any year the last revised assessment rolls of the municipalities in the district are not equalized by the Ministry of Revenue under subsection (1) before the 10th day of February, the board of management may apportion the amount that it estimates to be required in proportion to the amounts of their assessments most recently equalized, and in that case shall reapportion the amount and make the necessary adjustments after the equalization is completed. R.S.O. 1970, c. 206, s. 23 (6); 1971, c. 99, s. 3 (3); 1972, c. 1, s. 22 (2).

Where  
equalized  
assessment  
appealed

(9) Where in any year the last revised assessment rolls of the municipalities in a district are revised and equalized and have been appealed, the board of management may apportion the amount that it estimates to be required in proportion to the amounts of their assessment as revised and equalized, and in that case shall reapportion the amount and make the necessary adjustments in accordance with the decision of the Ontario Municipal Board or the judgment of a court. R.S.O. 1970, c. 206, s. 23 (7).

Power of  
district  
homes to  
borrow for  
current  
expenditures

(10) Subject to subsection (11), the board of management of a home established under section 6 or maintained and operated under an agreement with the Minister pursuant to section 10 may borrow from time to time by way of a promissory note such sums as the board considers necessary to meet the current expenditures of the board until the

current revenue is received. R.S.O. 1970, c. 206, s. 23 (8); 1972, c. 148, s. 5 (3).

(11) The amount that may be borrowed at any one time for the purpose mentioned in subsection (10) together with the total of any similar borrowings that have not been repaid shall not exceed 25 per cent of the estimated current revenue of the board for the year. <sup>Maximum borrowings</sup>

(12) Until the estimates of the board for the current year <sup>Idem</sup> under this section have been determined, the limitation upon borrowing prescribed in subsection (11) shall be temporarily calculated upon 25 per cent of the estimates for the board determined for the next preceding year. R.S.O. 1970, c. 206, s. 23 (9, 10).

**25.**—(1) The cost of establishing a new home under section 6 in a district or of an alteration, renovation or addition to or extension of an existing home established under that section or a home maintained and operated under an agreement with the Minister pursuant to section 10 shall be defrayed by the municipalities in the district in proportion to the amounts of their assessments according to their last revised assessment rolls as equalized. R.S.O. 1970, c. 206, s. 24 (1); 1972, c. 62, s. 9 (1); 1972, c. 148, s. 6. <sup>Capital cost of homes in districts</sup>

(2) To assist in defraying the cost of establishing such new home or the alteration, renovation or addition to or extension of such existing home, the Minister may direct payment out of the moneys appropriated therefor by the Legislature of such amount as he determines in accordance with the regulations and based upon the proportion of such cost that is allocated to the unorganized parts of the territorial district in which the home is established. R.S.O. 1970, c. 206, s. 24 (2); 1972, c. 62, s. 9 (2). <sup>Provincial subsidy</sup>

(3) The board of management shall apportion the amount that it estimates will be required to establish the new home or the alteration, renovation or addition to or extension of the existing home among the municipalities in the district and shall notify the clerk of each such municipality of the amount to be provided by that municipality. R.S.O. 1970, c. 206, s. 24 (3); 1972, c. 62, s. 9 (3). <sup>Apportionment</sup>

(4) Each such municipality shall, within ninety days after receipt of the notice, determine the method it will use in raising the amount required to be provided by it, and shall take such steps as are necessary to carry the determination into effect and shall raise the amount and pay it over to the board of management of the home. R.S.O. 1970, c. 206, s. 24 (4). <sup>Raising of funds</sup>

Alternative  
method of  
raising  
funds

**26.**—(1) The Ontario Municipal Board, upon the application of the council or one or more of the municipalities in the territorial district, may by order,

- (a) authorize one of the municipalities in the district to raise the whole amount required by the issue of its debentures; or
- (b) authorize two or more of the municipalities in the district to raise the whole amount required by the issue of their debentures in such amounts as the Ontario Municipal Board orders,

and thereupon the municipality or municipalities shall raise the whole amount required by the issue of debentures and shall pay the proceeds to the board of management of the home, and in such case subsection 25 (4) does not apply.

Apportion-  
ment of  
carrying  
charges

(2) Where debentures are issued to provide the whole amount required as provided in subsection (1), the board of management shall in each year during the currency of the debentures apportion the amount that will be required in that year to pay the amounts of principal and interest on the debentures among the municipalities in the district in proportion to the amounts of their assessments according to their last revised assessment rolls as equalized, and shall include the amount to be provided by each such municipality as a separate item in its estimates submitted to the clerk of the municipality under subsection 24 (5), and in such case subsection (7) of that section applies.

Distribution  
of carrying  
charges

(3) The board of management shall in each year distribute the moneys received under subsection (2) to the municipality that issued the debentures or, where two or more municipalities issued the debentures, to such municipalities in the same proportion as the amount raised by each such municipality bore to the total amount raised. R.S.O. 1970, c. 206, s. 25.

Provincial  
subsidy on  
capital  
expenditures

**27.**—(1) When the site and plans of a building to be acquired, erected or altered for use as a home or joint home have been approved by the Minister under subsection 14 (1), or when such other capital expenditures as are prescribed by the regulations are incurred in connection with the home or joint home, the Minister may direct payment to the municipality or municipalities or to the band or bands or to the board of management, as the case may be, acquiring, erecting or altering the building or incurring the capital expenditures, of an amount computed in accordance with the regulations not exceeding 50 per cent of the cost thereof or such higher percentage as the regulations prescribe. 1972, c. 62, s. 11 (1).

(2) Where a home is established and maintained under section 6, or is maintained and operated under an agreement with the Minister pursuant to section 10 in addition to the amount payable under subsection (1), the Minister may direct payment to the board of management of the proportion that is allocated by the regulations to the unorganized parts of the territorial district of the capital expenditure in respect of which a payment has not been made under subsection 25 (2). R.S.O. 1970, c. 206, s. 27 (2); 1972, c. 62, s. 11 (2); 1972, c. 148, s. 7.

Idem

(3) Payments under subsection (1) in respect of the erection of a new building or the alteration, renovation or addition to or extension of an existing building may be made either when the new building or the alteration, renovation, addition or extension, as the case may be, is completed and the building is ready for occupancy, or from time to time before completion thereof in the manner prescribed by the regulations. 1972, c. 62, s. 11 (3).

When payable

(4) In computing the amount of the cost of the new building, or the alteration, renovation or addition to or extension of an existing building for the purposes of subsection (1), the cost of equipment and furnishings may be included. R.S.O. 1970, c. 206, s. 27 (4); 1972, c. 62, s. 11 (4); 1973, c. 27, s. 9.

What to be included and excluded in computing cost

**28.** There shall be paid monthly to the municipality maintaining and operating a home, or to the municipalities maintaining and operating a joint home or to a board of management, out of the moneys appropriated therefor by the Legislature, an amount equal to that part of the operating and maintenance cost of the home or joint home that is computed in accordance with the regulations. 1972, c. 62, s. 12 (1), *part*.

Provincial subsidy on operating costs

**29.** There shall be paid monthly to the municipality maintaining and operating a home, or to the municipalities maintaining and operating a joint home or to a board of management out of the moneys appropriated therefor by the Legislature, an amount computed in the manner prescribed in the regulations as the cost of maintenance for each person in the home or joint home whose residence before admission to the home or joint home was in territory without municipal organization. 1972, c. 62, s. 12 (1), *part*.

Provincial subsidy for maintenance of residents of unorganized territory

**30.—(1)** Any person,

Extended care services

(a) who has been admitted to a home or joint home; and

(b) who is eligible for extended care services under the *Health Insurance Act* on the grounds of medical necessity,

R.S.O. 1980, c. 197

may receive extended care services available in the home or joint home where the home or joint home has been approved by the Director in accordance with the regulations to provide such services.

Application  
of  
R.S.O. 1980,  
c. 197

(2) The provisions of the *Health Insurance Act* apply with necessary modifications to a determination under subsection (1) of eligibility for extended care services on the grounds of medical necessity and to appeals therefrom.

Entitlement  
to services

(3) Notwithstanding subsections (1) and (2), an applicant for extended care services who has been found eligible therefor under this or any other Act does not thereby become as of right entitled to such services in a home or joint home. 1972, c. 62, s. 12 (2).

Regulations

**31.**—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing the location, site, size, design and construction of buildings used or to be acquired, erected or altered for use as homes or joint homes or any class thereof and the facilities and equipment to be provided therein;
2. governing the admission of persons to and their discharge from homes and joint homes and prescribing the conditions of eligibility therefor and the procedures for such admissions and discharges;
3. providing for the making of investigations of the financial circumstances of residents in or applicants for admission to homes and joint homes for the purpose of determining eligibility or continuing eligibility for admission to the home or joint home;
4. prescribing the staff requirements of homes and joint homes and governing the appointment of members of the staffs of homes and joint homes;
5. governing the qualifications of administrators and members of staffs of homes and joint homes and prescribing their powers and duties;
6. requiring the bonding of administrators and other employees or classes of employees of homes and joint homes in such form and terms and with such collateral security as are prescribed and providing for the forfeiture of the bonds and the disposition of the proceeds thereof;

7. prescribing the classes of persons who are in need of long-term maintenance and supervision in rest homes;
8. prescribing additional duties of the Director;
9. prescribing rules governing homes and joint homes, the residents therein and the staffs thereof;
10. prescribing the records and accounts that shall be kept under this Act and the returns that shall be made to the Minister;
11. prescribing procedures for selecting and evaluating the site for a home or joint home and for conducting a survey of the community and a review of population requirements and the contents of the report to be submitted to the Minister under section 13;
12. prescribing procedures for the development and preparation of plans for sites and buildings and the information to be contained in such plans;
13. prescribing and governing the social services, the medical, paramedical and nursing care and other services, and the items, amenities and recreational opportunities that shall be provided for residents in homes and joint homes or classes of homes and joint homes, prescribing classes or levels of such care, services, items, amenities and recreational opportunities in accordance with the needs of the residents, and providing for the assessment and classification of the residents for the purpose of determining the class or level of care, services and items required by them;
14. prescribing the percentage of bed capacity to be maintained and used in homes or joint homes or any class of home or joint home for any prescribed class or level of care and services to be provided in the home or joint home or class thereof, as the case may be;
15. prescribing the maximum amounts that may be charged residents in homes or joint homes for any prescribed class or level of care, services, items and amenities provided in the homes or joint homes;
16. providing for the terms and conditions of trust in addition to any terms and conditions of any agreement entered into under section 11, upon which a munici-

pality or board of management operating a home or joint home may receive and hold property of a resident in the home or joint home;

17. requiring in-service training programs to be provided for members of staffs of homes and joint homes;
18. defining "extended care services" and "nursing care" and prescribing facilities, items and services to be included in either of such definitions and prescribing standards of eligibility in addition to those mentioned in this Act for extended care services of residents in homes and joint homes or any class thereof and the manner of determining such eligibility;
19. prescribing the manner of applying for extended care services and providing for the termination, reinstatement or extension of such services for residents in homes or joint homes or any class thereof;
20. providing for the approval of homes and joint homes and classes thereof by the Director to provide extended care services and prescribing the circumstances and conditions under which such approval may be given, including the facilities, equipment, services and programs to be provided therein;
21. determining the amounts to be paid by any resident or class of resident in homes or joint homes towards the cost of his maintenance therein;
22. defining "operating and maintenance cost", prescribing the manner of computing the part of such costs of homes and joint homes and classes of payments for the purpose of determining the amounts of the payments to be made under section 28;
23. prescribing the manner of computing the proportion of costs in respect of homes established and maintained under section 6 and homes maintained and operated under an agreement with the Minister pursuant to section 10 that shall be allocated to the unorganized parts of territorial districts for the purposes of sections 25 and 27;
24. prescribing capital expenditures and the manner of computing the amount of grants for the purposes of subsection 27 (1) and prescribing classes of payments and the method, time and manner of payment under subsection 27 (3);

25. prescribing the manner of computing the cost of maintenance of persons in homes or joint homes whose residence immediately before admission to the home or joint home was in territory without municipal organization, for the purposes of section 29;
26. prescribing the terms and conditions upon which the Director may approve the provision of residential services in other than a home or joint home, the classes or levels of such services, the services, items and amenities to be provided in connection therewith and the maximum amounts that may be charged to persons in receipt thereof for the purposes of section 20;
27. prescribing the frequency and manner of inspection of premises other than a home or joint home by a representative of a municipality or board of management for the purposes of section 21;
28. prescribing the manner of computing the amount to be paid by Ontario towards the cost of residential services provided in other than a home or joint home for any person, the method, time and manner of payment and classes of payments, for the purposes of section 20;
29. prescribing the composition of a committee of management, the qualifications and terms of office of the members thereof for the purposes of section 8;
30. providing for the division of each district into areas, the appointment of members of boards of management under section 9, representing the areas to each board having regard to the proportionate distribution amongst the areas of population and equalized assessment and providing for the further appointment by the Lieutenant Governor in Council of members at large to the boards of management, prescribing the qualifications for appointment, fixing the number of members for each board and the terms of office of such members and requiring the chairmanship of boards of management to change hands at prescribed intervals;
31. prescribing forms and providing for their use;

32. respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 206, s. 30 (1); 1971, c. 99, s. 4; 1972, c. 62, s. 13; 1972, c. 148, s. 8 (1); 1973, c. 27, s. 10.

Division of  
territorial  
districts

(2) The Lieutenant Governor in Council may divide any territorial district into two parts for the purposes of this Act, in which event each of such parts shall be deemed to constitute a territorial district for the purposes of this Act. R.S.O. 1970, c. 206, s. 30 (2).

## CHAPTER 204

## Horticultural Societies Act

## 1. In this Act,

Interpre-  
tation

- (a) "board" means a board of directors elected under this Act;
- (b) "Director" means the Director of the Agricultural and Horticultural Societies Branch of the Ministry of Agriculture and Food;
- (c) "Minister" means the Minister of Agriculture and Food;
- (d) "society" means a horticultural society organized under this Act or under any former Act having a similar purpose. 1975, c. 36, s. 2, *revised*.

2.—(1) Where any dispute arises as to the operation or <sup>Disputes</sup> construction of this Act, the Director shall, after a hearing, decide such dispute. 1971, c. 50, s. 47 (1), *part*; 1975, c. 36, s. 1.

(2) A party to a dispute under this section may appeal <sup>Appeal from decision of Director</sup> from a decision of the Director to the Minister within fifteen days after receipt of the decision of the Director and the Minister may, after considering the record of the proceedings before the Director and affording to the parties an opportunity for an argument on the appeal, affirm, vary or annul the decision of the Director. 1971, c. 50, s. 47 (1), *part*; 1975, c. 36, s. 1.

(3) The Director or the Minister, as the case may be, <sup>Stated case</sup> may of his own motion, or upon the request of any party to a dispute or an appeal, state a case in writing to the Divisional Court setting forth any question of law that arises at the hearing or on the appeal and the facts material thereto. 1971, c. 50, s. 47 (1), *part*; 1975, c. 36, s. 1.

(4) If the Director or the Minister, as the case may be, <sup>Refusal to state case</sup> refuses to state a case under this section, the party requesting

it may apply to the Divisional Court for an order directing him to state such a case. 1971, c. 50, s. 47 (1), *part*; 1975, c. 36, s. 1.

Decision  
of court

(5) Where a case is stated under this section, the Divisional Court shall hear and determine the question raised in a summary manner and shall certify its decision to the Director or the Minister, as the case may be, and the Director or the Minister shall dispose of the dispute in accordance therewith. 1971, c. 50, s. 47 (1), *part*; 1975, c. 36, s. 1.

Where  
societies  
may be  
organized

**3.—(1)** A society may be organized in any local municipality or in a police village having a population of not less than 200, or in any two of them that adjoin each other.

Additional  
societies

(2) In a local municipality having a population of not less than 100,000 there may be two societies and for each additional 100,000 of population there may be an additional society.

Reorgan-  
ization,  
etc., of muni-  
cipality does  
not affect  
existing  
society  
Organiza-  
tion

(3) A reorganization, amalgamation or boundary alteration of a municipality does not affect any society that has been organized prior thereto. 1975, c. 36, s. 3.

**4.** The mode of organization of a society shall be as follows:

Agreement

1. An agreement in the form prescribed by the Minister shall be signed by the persons who desire to organize a society and who are resident in the municipality or municipalities in which the society is to be organized.

Signatories  
to agreement

2. The number of persons signing the agreement shall be, in the case of a society in a territorial district or provisional county, at least 25 and elsewhere in Ontario, at least 50.

Fee payable  
by  
signatories

3. Every person who signs the agreement shall pay to the person having charge thereof the sum of \$2 as a membership fee and all such sums become the property of the society upon its organization, and, where no society is organized, the sums shall be repaid to the persons entitled thereto.

Organiza-  
tion  
meeting;  
call

4. Within two months after the date of the first signature to the agreement, the agreement shall be transmitted to the Director who may, with the approval of the Minister, authorize any person to call a meeting for the organization of a society.

when to be  
held

5. The organization meeting shall be held as soon as practicable after the required number of signatures

are obtained or at such other time as the Director authorizes, upon at least one week's notice published in a newspaper having a general circulation in the area in which the society is to be organized.

6. At the organization meeting, and at every regular meeting of a society, ten members constitute a quorum.
7. At the organization meeting there shall be elected a board of directors composed of a president, first vice-president and second vice-president to hold office until the next annual meeting and ten directors of whom five shall hold office until the next annual meeting and five shall hold office until the next following annual meeting and,
  - (a) where any member of the board so elected has not paid the sum of \$2 required by paragraph 3, he shall pay such sum to the treasurer or secretary-treasurer within two weeks of the election; and
  - (b) where the Director has so authorized, there may be elected not more than five additional directors and not more than five junior directors and no person is eligible for election as a junior director who, at the time of the election, is more than twenty-six years of age.
8. At the organization meeting and at every annual meeting there shall be elected two auditors to hold office until the next annual meeting.
9. The board, from among themselves or otherwise, shall appoint a secretary and a treasurer, or a secretary-treasurer, who shall remain in office during pleasure, and the secretary or secretary-treasurer shall be a member of every committee that is appointed by the board.
10. The board may require the treasurer or secretary-treasurer to furnish such bond as is considered necessary to ensure the faithful performance of his duties and the proper administration of all funds belonging to the society coming into his hands and, where no such bond is required by the board, every member of the board is personally liable for all funds belonging to the society that come into the hands of the treasurer.

Report of  
organiza-  
tion  
meeting

11. A report of the organization meeting, certified by the president, the secretary and the person calling the meeting, containing a statement of the number of members and a list of the officers and directors elected or appointed, together with their addresses, shall be sent to the Director by the secretary within one week after the holding of the meeting. R.S.O. 1970, c. 207, s. 4; 1975, c. 36, ss. 1, 4.

Declaration  
of society

5. Upon the receipt of such report, the Director, with the approval of the Minister, may declare the society to be a society within the meaning of this Act. R.S.O. 1970, c. 207, s. 5; 1975, c. 36, s. 1.

Combina-  
tion of  
societies

6. Subject to the approval of the Minister, any two or more societies may combine to form one society on such terms and conditions as the Minister may prescribe. R.S.O. 1970, c. 207, s. 6.

Dissolution  
of society  
upon  
petition

7. Upon the petition of not less than twenty-five members of a society, the Minister may dissolve the society or may constitute two or more societies upon such terms and conditions as he considers proper. R.S.O. 1970, c. 207, s. 7.

Persons  
entitled to  
membership

- 8.—(1) Every person of the full age of sixteen years or over is entitled to become a member of a society and every person under the age of sixteen years is entitled to become an associate member of a society.

Partnership,  
corporation  
or associa-  
tion may  
be member

- (2) Subject to the by-laws of a society, a partnership or incorporated company or an association directed towards horticultural interests may become a member of the society upon payment of the prescribed fee but, in every such case, the partnership, company or association shall delegate one person to exercise the privilege of membership in the society.

Membership  
fee

- (3) In every society there shall be an annual membership fee of not less than \$1. 1975, c. 36, s. 5, *part*.

Fiscal  
year

- (4) The fiscal year of every society is the calendar year unless the Minister otherwise authorizes. R.S.O. 1970, c. 207, s. 8 (4).

Voting of  
members

- (5) Every full member in good standing of a society is entitled to vote on all questions coming before a regular or special meeting of the society. 1975, c. 36, s. 5, *part*.

Object

- 9.—(1) The object of a society is to encourage interest and improvement in horticulture,

- (a) by holding meetings for instruction and discussion on subjects connected with the theory and practice of horticulture;
- (b) by encouraging the improvement of private and public grounds, including highways and streets, by the planting of trees, shrubs and flowers, and by otherwise promoting outdoor art, public beautification, balcony gardening, therapeutic use of horticulture, community gardens and plot gardening;
- (c) by interesting youth and others in the study of horticulture by the holding of meetings, field trips, contests and competitions and by such other means as the society considers proper;
- (d) by holding exhibitions and awarding premiums for the production of vegetables, plants, flowers, fruits, trees and shrubs;
- (e) by the distribution of seeds, plants, bulbs, flowers, trees and shrubs in ways calculated to create an interest in horticulture;
- (f) by promoting the protection of the environment with appropriate horticultural projects; and
- (g) by promoting the circulation of horticultural information through all available media including periodicals and provision of books for libraries. R.S.O. 1970, c. 207, s. 9 (1); 1975, c. 36, s. 6.

(2) A society shall not expend more than one-half of its <sup>Expenditure of annual receipts</sup> total annual receipts, other than grants or donations made for specific purposes, upon any one of the projects enumerated in subsection (1), except for the purposes of planting trees, shrubs and plants on public grounds and the promotion of outdoor art and public beautification.

(3) None of the funds of a society shall be expended for <sup>Expenditure of funds</sup> any purpose not indicated in subsection (1), and a society that contravenes any of the provisions of this section is not entitled to a Government grant for the year in which the contravention occurs, or where the grant for such year has already been paid, for the next following year, subject however to any direction that the Minister may make. R.S.O. 1970, c. 207, s. 9 (2, 3).

**10.—**(1) Every society shall hold a meeting annually during the month of January or such other month as the Director <sup>Annual meeting:</sup>

approves at such time and place as the board determines. R.S.O. 1970, c. 207, s. 10 (1); 1975, c. 36, s. 1.

notice

(2) At least one week's notice of every annual meeting shall be given by the publication of a notice of the meeting in a newspaper having a general circulation in the municipality or by mailing a notice of the meeting to each member of the society at the address furnished to the secretary. R.S.O. 1970, c. 207, s. 10 (2).

Procedure

**11.**—(1) At an annual meeting, the board shall present a report of the activities and accomplishments of the society during the preceding year and the financial statement for the preceding year certified by the auditors on the form prescribed by the Minister, and the officers and other members of the board shall be elected or appointed in the manner provided by section 4, provided that five directors shall be elected at each annual meeting. R.S.O. 1970, c. 207, s. 11.

*ex officio*  
member

(2) Where there is an immediate past president of a society, he is *ex officio* a member of the board. 1975, c. 36, s. 7.

Dissolution

**12.**—(1) In the event of failure to hold the annual meeting in accordance with this Act or in the event of the number of members of a society on the 1st day of July in any year being less than the number required for organization, the society is not entitled to receive any further Government grant and shall be deemed to be dissolved, subject to any direction of the Minister, and the persons comprising the board during the last year of the existence of the society shall be trustees of the assets of the society and shall deliver to the Director a statement of its assets and liabilities. R.S.O. 1970, c. 207, s. 12 (1); 1975, c. 36, s. 1.

Payment of  
debts and  
disposal of  
surplus  
moneys

(2) The Director may direct the members of the board to pay the debts of the society out of the moneys and other assets remaining in their hands and liquidate any of the assets for such purpose and may direct such members to dispose of any moneys or other assets then remaining in such manner as he determines. R.S.O. 1970, c. 207, s. 12 (2); 1975, c. 36, s. 1.

Statement  
to be sent  
to Minister

**13.**—(1) A statement of officers and members and a copy of the financial statement in the form prescribed by the Minister and certified by the president, secretary-treasurer or secretary and treasurer, and auditors to be true copies shall be forwarded to the Director within ninety days of the holding of the annual meeting. 1975, c. 36, s. 8.

(2) The Minister may at any time require a society or any officer of a society to furnish such information regarding the society as he considers necessary or desirable. Minister may require information

(3) The Minister may require any financial or other statement or information required to be furnished to him to be accompanied by an affidavit of all or any of the officers of the society deposing to its accuracy. R.S.O. 1970, c. 207, s. 13 (2, 3). Minister may require affidavit certifying

**14.** A meeting of the board shall be called by the secretary upon the direction of the president or of any three members of the board by sending notice thereof to all the members of the board at least three days before the time fixed for the meeting; but a meeting of the board may be held immediately following any annual, regular or special meeting of the society, without notice. R.S.O. 1970, c. 207, s. 14. Meetings of board

**15.—**(1) Subject to the by-laws and regulations of the society, the board has power to act for and on behalf of the society in all matters. R.S.O. 1970, c. 207, s. 15 (1). Powers of board

(2) One-third of the members of the board constitutes a quorum. 1975, c. 36, s. 9. Quorum

(3) When a vacancy occurs on the board by reason of the death or resignation of any officer or director or otherwise, the remaining members of the board may appoint any member of the society to fill the vacancy. R.S.O. 1970, c. 207, s. 15 (3). Vacancies

**16.** The board may determine what regular and special meetings of the society shall be held during each year. R.S.O. 1970, c. 207, s. 16. Meetings

**17.** By-laws and regulations of a society may be made, adopted, amended or repealed at any annual or regular meeting of the society or at a special meeting of which at least one week's notice has been given in the manner provided for by subsection 10 (2). R.S.O. 1970, c. 207, s. 17. By-laws and regulations

**18.** Every society that has complied with this Act and has furnished the statements and other information required by the Minister is entitled to receive a grant out of the moneys appropriated by the Legislature for such purpose if the membership of the society is not less than that required for organization purposes. R.S.O. 1970, c. 207, s. 18. Provincial grants

Payment  
of grants

**19.** Grants shall be paid to societies out of moneys appropriated therefor by the Legislature according to the following plan:

1. Every society shall, during the first year of its existence, receive a grant amounting to \$2 for every paid-up member as of the 1st day of July, but no such grant shall exceed \$200.
2. Subject to paragraph 3, every society that has been in existence for more than one year shall receive a grant amounting to,
  - (a) \$1 for every paid-up member during the previous year; and
  - (b) one-half of the total amount expended by the society during the preceding year for the purpose of carrying out its objects, and, for the purpose of this clause, up to one-quarter of the amount expended by the society may be composed of the value of donated labour.
3. No grant under paragraph 2 shall exceed,
  - (a) in the case of a society with 100 or fewer members, \$500;
  - (b) in the case of a society with more than 100 and fewer than 200 members, \$1,000; and
  - (c) in the case of a society with 200 members or more, \$1,500. 1975, c. 36, s. 10, *part*.

Municipal  
grants

**20.** The council of a city, town, village, township, regional municipality, district municipality or county may grant money to any society organized wholly or partly within its limits. 1975, c. 36, s. 10, *part*.

Entitlement  
to  
affiliation

**21.** Every society within the meaning of this Act is entitled to be affiliated with the Ontario Horticultural Association upon payment of the affiliation fees prescribed therefor by the Association. 1975, c. 36, s. 10, *part*.

Inspection  
and inquiry

**22.—(1)** The Minister may appoint a person to inspect the books and accounts of any society receiving legislative grants under this Act or to inquire into the affairs of such society, and every officer of the society shall, when required by such person, make available the books and accounts thereof for the purpose of such inspection or inquiry.

(2) A person appointed under subsection (1) has, for the purposes of an inspection or inquiry thereunder, the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inspection or inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 47 (2), *part*.

Powers of  
inquiry

R.S.O. 1980,  
c. 411

**23.**—(1) Where the board of a society has reason to believe that any member or other person exhibiting a product at an exhibition at which prizes are offered by the society has committed a fraud or made any misrepresentation in respect of the product, the board may withhold payment or delivery of any prize money or other prize award to the member or person and the board shall, forthwith, furnish to him a written statement of its reasons for so doing.

Fraud in  
obtaining  
prizes

(2) A member or other person from whom prize money or a prize award has been withheld by the board of a society under subsection (1) may appeal to a judge of the county or district court of the county or district in which the head office of the society is situate by filing a notice of appeal in the office of the clerk of the court and leaving a copy of the notice of appeal at the head office of the board within fifteen days after receipt of the statement of the reasons of the board furnished under subsection (1).

Appeal

(3) The appellant and the board from whose decision the appeal is taken are parties to an appeal under this section.

Parties

(4) An appeal to a judge under this section shall be held by way of a hearing *de novo*.

Hearing  
*de novo*

(5) On an appeal under this section, the judge may affirm, vary or annul the decision of the board and may order the board to pay or deliver any prize money or prize award withheld by it under this section. 1971, c. 50, s. 47 (2), *part*.

Decision  
of judge



## CHAPTER 205

## Hospital Labour Disputes Arbitration Act

1.—(1) In this Act,

Interpre-  
tation

(a) “hospital” means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged;

(b) “hospital employee” means a person employed in the operation of a hospital;

(c) “Minister” means the Minister of Labour;

(d) “party” means the trade union that is the bargaining agent for a bargaining unit of hospital employees, on the one hand, or the employers of such employees, on the other hand, and “parties” means the two of them. R.S.O. 1970, c. 208, s. 1 (1); 1972, c. 152, s. 1 (1), *revised*.

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*. R.S.O. 1970, c. 208, s. 1 (2). Idem  
R.S.O. 1980,  
c. 228

(3) A laundry that is operated exclusively for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act. Laundry

(4) A stationary power plant as defined in the *Operating Engineers Act* that is operated principally for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act. 1972, c. 152, s. 1 (2). Stationary  
power plant  
R.S.O. 1980,  
c. 363

Application  
of Act

**2.**—(1) This Act applies to any hospital employees to whom the *Labour Relations Act* applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.

Application  
of  
R.S.O. 1980,  
c. 228

(2) Except as modified by this Act, the *Labour Relations Act* applies to any hospital employees to whom this Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. R.S.O. 1970, c. 208, s. 2.

Notice of no  
collective  
agreement

**3.** Where a conciliation officer appointed under section 16 of the *Labour Relations Act* is unable to effect a collective agreement within the time allowed under section 18 of that Act, the Minister shall forthwith by notice in writing inform each of the parties that the conciliation officer has been unable to effect a collective agreement, and sections 17 and 19 of the *Labour Relations Act* shall not apply. 1972, c. 152, s. 2.

Arbitration

**4.** Where the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, the matters in dispute between the parties shall be decided by arbitration in accordance with this Act. 1972, c. 152, s. 3, *part*.

Appointment  
of single  
arbitrator

**5.**—(1) Where the parties agree to have the matters in dispute between them decided by a single arbitrator, they shall, within the time set out in subsection 6 (1), jointly appoint a person who has indicated his willingness to act.

Single  
arbitrator's  
powers

(2) The person so appointed shall constitute the board of arbitration for the purposes of this Act and he shall have the powers and duties of a chairman of a board of arbitration.

Notice to  
Minister

(3) As soon as the parties appoint a person to act as a single arbitrator, they shall notify the Minister of the name and address of the person appointed. 1972, c. 152, s. 3, *part*.

Appointment  
of board of  
arbitration

**6.**—(1) Within seven days after the day upon which the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, each of the parties shall appoint to a board of arbitration a member who has indicated his willingness to act.

Extension  
of 7 day  
period

(2) The parties by a mutual agreement in writing may extend the period of seven days mentioned in subsection (1) for one further period of seven days.

(3) Where a party fails to appoint a member of a board of arbitration within the period or periods mentioned in subsection (1), the Minister, upon the written request of either of the parties, shall appoint such member. <sup>Failure to appoint member</sup>

(4) Within ten days after the day on which the second of the members was appointed, the two members appointed by or on behalf of the parties shall appoint a third member who has indicated his willingness to act, and such third member shall be the chairman. <sup>Third member</sup>

(5) Where the two members appointed by or on behalf of the parties fail within ten days after the appointment of the second of them to agree upon the third member, notice of such failure shall be given forthwith to the Minister by the parties, the two members or either of them and the Minister shall appoint as a third member a person who is, in the opinion of the Minister, qualified to act. 1972, c. 152, s. 4 (1), *part, revised*. <sup>Failure to appoint third member</sup>

(6) As soon as one of the parties appoints a member to a board of arbitration, that party shall notify the other party and the Minister of the name and address of the member appointed. <sup>Notice of appointment by party</sup>

(7) As soon as the two members appoint a third member, they shall notify the Minister of the name and address of the third member appointed. 1972, c. 152, s. 4 (1), *part*. <sup>Notice of appointment by members</sup>

(8) If a person ceases to be a member of a board of arbitration by reason of his resignation, death or otherwise before it has completed its work, the Minister shall appoint a member in his place after consulting the party whose point of view was represented by such person. <sup>Vacancies</sup>

(9) If, in the opinion of the Minister, a member of a board of arbitration has failed to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a member in his place after consulting the party whose point of view was represented by such person. <sup>Replacement of member</sup>

(10) If the chairman of a board of arbitration is unable to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a person to act as chairman in his place. R.S.O. 1970, c. 208, s. 5 (7-9). <sup>Replacement of chairman</sup>

Where single  
arbitrator  
unable to act

(11) If the person appointed jointly by the parties as a single arbitrator dies before he has completed his work or is unable to enter on or to carry on his duties so as to enable him to render a decision within a reasonable time after his appointment, the Minister may, upon notice or complaint to him by either of the parties and after consulting the parties, inform the parties in writing that the arbitrator is unable to enter on or to carry on his duties and the provisions of this section relating to the appointment of a board of arbitration shall thereupon apply with necessary modifications. 1972, c. 152, s. 4 (1), *part*.

Idem

(12) No person shall be appointed a member of a board of arbitration under this Act who has any pecuniary interest in the matters coming before it or who is acting or has, within a period of six months preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties. R.S.O. 1970, c. 208, s. 5 (11).

Chairman  
to fix  
hearings

(13) The chairman of the board of arbitration shall fix the time and place of the first or any subsequent hearing and shall give notice thereof to the Minister and the Minister shall notify the parties and the members of the board of arbitration thereof. 1972, c. 152, s. 4 (2), *part, revised*.

Failure of  
member  
to attend

(14) Where a member of a board of arbitration appointed by a party or by the Minister is unable to attend the first hearing at the time and place fixed by the chairman, the party shall, upon the request in writing of the chairman, appoint a new member in place of such member and where such appointment is not made within five days of the date of the request, the Minister shall, upon the written request of the chairman, appoint a new member in place of such member. 1972, c. 152, s. 4 (2), *part*.

Order to  
expedite  
proceedings

(15) Where a board of arbitration has been established, the chairman shall keep the Minister advised of the progress of the arbitration and where the Minister is advised that the board has failed to render a decision within a reasonable time, the Minister may, after consulting the parties and the board, issue whatever order he considers necessary in the circumstances to ensure that a decision will be rendered without delay. 1972, c. 152, s. 4 (3), *revised*.

Procedure

(16) A board of arbitration shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions.

(17) If the members of a board of arbitration are unable to agree <sup>Idem</sup> among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

(18) The decision of a majority of the members of a board of arbitration is the decision of the board, but, if there is no majority, the decision of the chairman is the decision of the board. <sup>Decision</sup>

(19) The chairman and the other members of a board of arbitration established under this Act have, respectively, all the powers of a chairman and the members of a board of arbitration under the *Labour Relations Act*. R.S.O. 1970, c. 208, s. 5 (13-16). <sup>Powers</sup> <sup>R.S.O. 1980, c. 228</sup>

7. Where a person has been appointed as a single arbitrator or the three members have been appointed to a board of arbitration, it shall be presumed conclusively that the board has been established in accordance with this Act and no application shall be made, taken or heard for judicial review or to question the establishment of the board or the appointment of the member or members, or to review, prohibit or restrain any of its proceedings. 1972, c. 152, s. 5, *part*. <sup>Appointment or proceedings of board not subject to review</sup>

8.—(1) Where there are matters in dispute between parties to be decided by more than one arbitration in accordance with this Act, the parties may agree in writing that the matters in dispute shall be decided by one board of arbitration. <sup>Single arbitration of several disputes</sup>

(2) For the purposes of section 6, the trade unions and councils of trade unions that are the bargaining agents for or on behalf of any hospital employees to whom this Act applies shall be one party and the employers of such employees shall be the other party. <sup>Parties</sup>

(3) In an arbitration to which this section applies, the board may, in addition to the powers conferred upon a board of arbitration by this Act, <sup>Powers of board</sup>

- (a) make a decision on matters of common dispute between all of the parties; and
- (b) refer matters of particular dispute to the parties concerned for further bargaining.

Idem

(4) Where matters of particular dispute are not resolved by further collective bargaining pursuant to clause (3) (b), the board shall decide the matters. 1972, c. 152, s. 5, *part*.

Duty of board

9.—(1) The board of arbitration shall examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the parties, but the board shall not decide any matters that come within the jurisdiction of the Ontario Labour Relations Board.

Board to remain seized of matters

(2) The board of arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties.

R.S.O. 1980,  
c. 25 not  
to apply

(3) The *Arbitrations Act* does not apply to arbitrations under this Act. R.S.O. 1970, c. 208, s. 6.

Where agreement reached

10.—(1) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties agree on all the matters to be included in a collective agreement, they shall put them in writing and shall execute the document, and thereupon it constitutes a collective agreement under the *Labour Relations Act*. R.S.O. 1970, c. 208, s. 7 (1).

R.S.O. 1980,  
c. 228

Failure to make agreement

(2) If the parties fail to put the terms of all the matters agreed upon by them in writing or if having put the terms of their agreement in writing either of them fails to execute the document within seven days after it was executed by the other of them, they shall be deemed not to have made a collective agreement, and the provisions of sections 3 and 4 or sections 6 and 9, as the case may be, shall apply.

Decision of board

(3) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties have agreed upon some matters to be included in the collective agreement and have notified the board in writing of the matters agreed upon, the decision of the board shall be confined to the matters not agreed upon by the parties and to such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties.

Idem

(4) Where the parties have not notified the board of arbitration in writing that, during the bargaining under this Act or during the proceedings before the board of arbitration, they have agreed upon some matters to be included in the collective agreement, the board shall decide all matters in

dispute and such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties.

(5) Within five days of the date of the decision of the board of arbitration or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute a document giving effect to the decision of the board and any agreement of the parties, and the document thereupon constitutes a collective agreement. Execution of agreement

(6) If the parties fail to prepare and execute a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties within the period mentioned in subsection (5), the parties or either of them shall notify the chairman of the board in writing forthwith, and the board shall prepare a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties and submit the document to the parties for execution. Preparation of agreement by board

(7) If the parties or either of them fail to execute the document prepared by the board within a period of five days from the day of its submission by the board to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes a collective agreement under the *Labour Relations Act*. Failure to execute agreement  
R.S.O. 1980,  
c. 228

(8) Except in arbitrations under section 8, the date the board of arbitration gives its decision is the effective date of the document that constitutes a collective agreement between the parties. Effective date

(9) The date the board of arbitration gives its decision under section 8 upon matters of common dispute shall be deemed to be the effective date of the document that constitutes a collective agreement between the parties. Idem

(10) Except where the parties agree to a longer term of operation, any document that constitutes a collective agreement between the parties shall remain in force for a period of one year from the effective date of the document. Term of agreement

(11) Notwithstanding the provisions of subsection (10) and except where the parties agree to a longer term of operation, a document that constitutes a collective agreement shall cease to operate on the expiry of a period of two years, Idem

(a) from the day upon which notice was given under section 14 of the *Labour Relations Act*; or

- (b) from the day upon which the previous collective agreement ceased to operate where notice was given under section 53 of the *Labour Relations Act*.

R.S.O. 1980,  
c. 228

Idem

(12) Where under subsection (11), the period of two years has expired on or will expire within a period of less than ninety days from the date the board of arbitration gives its decision, the document that constitutes a collective agreement shall continue to operate for a period of ninety days from the date the board of arbitration gives its decision for the purposes of subsection 5 (4); subsection 53 (1) and subsection 57 (2) of the *Labour Relations Act*.

Idem

(13) In making its decision upon matters in dispute between the parties, the board of arbitration may provide,

- (a) where notice was given under section 14 of the *Labour Relations Act*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which such notice was given; or

- (b) where notice was given under section 53 of the *Labour Relations Act*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which the previous agreement ceased to operate. 1972, c. 152, s. 6.

Strikes and  
lock-outs  
prohibited

**11.**—(1) Notwithstanding anything in the *Labour Relations Act*, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out. R.S.O. 1970, c. 208, s. 8 (1).

Application  
of  
R.S.O. 1980,  
c. 228

(2) Sections 74 and 75, subsection 76 (1) and sections 77, 92, 93 and 95 of the *Labour Relations Act* as amended or re-enacted from time to time apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. 1972, c. 152, s. 7, *part*.

Timeliness  
of repre-  
sentation  
applications

**12.**—(1) Notwithstanding section 61 of the *Labour Relations Act*, where a trade union that has been certified as bargaining agent for a bargaining unit of employees of a hospital has given to the employer of such employees notice under section 14 of that Act and the Minister has appointed a conciliation officer, an application for a declaration that the trade union no longer represents the employees in the bargaining unit determined in the certificate may be made only in accordance with subsection 57 (2) of the *Labour Relations Act*. R.S.O. 1970, c. 208, s. 9 (1); 1972, c. 152, s. 8 (1).

(2) Notwithstanding section 61 of the *Labour Relations Act*, where notice has been given under section 53 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer, whichever is later, except in accordance with section 5 or subsection 57 (2) of the *Labour Relations Act*, as the case may be. R.S.O. 1970, c. 208, s. 9 (2); 1972, c. 152, s. 8 (2).

Idem  
R.S.O. 1980,  
c. 228

**13.** Notwithstanding subsection 79 (1) of the *Labour Relations Act*, where notice has been given under section 14 or 53 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of hospital employees to which this Act applies to or by the employer of such employees and no collective agreement is in operation, no such employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, and no such trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, until the right of the trade union to represent the employees has been terminated. R.S.O. 1970, c. 208, s. 10.

Working  
conditions  
may not be  
altered

**14.** Except where inconsistent with this Act, sections 96, 97, 98, 99 and 101 of the *Labour Relations Act*, as amended or re-enacted from time to time, apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. R.S.O. 1970, c. 208, s. 11.

Offences

**15.** A notice by the Minister that a conciliation officer has been unable to effect a collective agreement if sent by mail to a party addressed to the party at its last known address shall be deemed to have been received on the second day after the day on which the notice was so mailed. 1972, c. 152, s. 9, *part*.

Mailed  
notice

**16.** Every chairman of a board of arbitration shall file a copy of every decision of the board with the Minister. 1972, c. 152, s. 9, *part, revised*.

Filing of  
decisions

Surveys and  
research  
programs

**17.**—(1) The Minister may require such surveys and research programs to be conducted as he considers advisable or necessary for the assistance of parties and boards of arbitration.

Idem

(2) A copy of any survey or research program conducted under subsection (1) or of the results thereof shall be admissible in evidence before a board of arbitration established under this Act. 1972, c. 152, s. 9, *part*.

Application  
of  
R.S.O. 1980,  
c. 484

**18.** Part I of the *Statutory Powers Procedure Act* does not apply to proceedings before a board of arbitration established under this Act. 1972, c. 152, s. 9, *part*.

Expenses

**19.** The expenses incurred in the administration of this Act shall be paid out of such moneys as are appropriated therefor by the Legislature. R.S.O. 1970, c. 208, s. 12.

Regulations

**20.** The Lieutenant Governor in Council may make regulations,

- (a) providing for and regulating the engagement of experts, investigators and other assistants by boards of arbitration;
- (b) providing for and fixing the remuneration and expenses of chairmen and other members of boards of arbitration;
- (c) prescribing rules of practice and procedure;
- (d) prescribing forms and providing for their use;
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 208, s. 13.

## CHAPTER 206

**Hospitals and Charitable Institutions  
Inquiries Act**

**1.** Whenever the Lieutenant Governor in Council considers <sup>Inquiry</sup> it expedient to cause inquiry to be made concerning any matter connected with or affecting a hospital, sanatorium, charitable institution or other organization that is granted aid out of moneys appropriated by the Legislature, he may, by commission, appoint one or more persons to conduct such inquiry, and every person so appointed has for that purpose the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 48, *part*.

R.S.O. 1980,  
c. 411



## CHAPTER 207

## Hotel Fire Safety Act

## 1. In this Act,

Interpre-  
tation

- (a) "Fire Marshal" means the Fire Marshal of Ontario;
- (b) "hotel" means an establishment consisting of one building or two or more connected or adjacent buildings that provides sleeping accommodation for the public and is licensed or required to be licensed under the *Tourism Act* or the *Liquor Licence Act*, but does not include a one-storey building that, R.S.O. 1980,  
cc. 507, 244
- (i) has a total floor area of less than 3,000 square feet,
- (ii) is not attached to any other building, and
- (iii) is at least thirty feet distant from any other building that is a hotel within the meaning of this clause;
- (c) "hotelkeeper" means the person who has the management and control of a hotel;
- (d) "inspector" means an inspector appointed under this Act;
- (e) "noncombustible construction" means construction of a type so defined by the regulations;
- (f) "regulations" means the regulations made under this Act;
- (g) "storey" means that part of a building between the top of a floor and the top of the next floor above it, or if there is no floor above it, that part between the top of a floor and the ceiling above it, but does not include a penthouse that is not used by the public,

and the storey closest to grade having its ceiling more than six feet above grade shall be deemed to be the first storey. 1971, c. 41, s. 1; 1972, c. 1, s. 79 (1).

Application  
of Act

**2.** This Act applies to every hotel whether constructed before or after this Act comes into force. 1971, c. 41, s. 2.

Approval of  
plans by  
Fire Marshal

**3.** No person shall,

- (a) construct a hotel;
- (b) construct an addition to a hotel;
- (c) convert a building to a hotel; or
- (d) alter a hotel,

until complete drawings and specifications thereof have been submitted to and approved by the Fire Marshal. 1971, c. 41, s. 3.

Structural  
assemblies

**4.** Every hotel and every addition made to a hotel, shall have its structural assemblies including its floor assemblies, load-bearing walls, supporting columns and arches, roof assembly and stairways constructed in the manner and of the materials prescribed by the regulations. 1971, c. 41, s. 4.

Exits

**5.** Every hotel shall have such exits, including exit doorways, corridors and exit stairways, designed, located, maintained, identified, lighted, and in the case of exit doors, equipped with such hardware as the regulations prescribe. 1971, c. 41, s. 5.

Fire alarm  
system

**6.** Every hotel shall have in each building that,

- (a) has a total floor area of more than 6,000 square feet;
- (b) is more than one storey in height; or
- (c) does not have direct egress to the outdoors from each sleeping room occupied individually and not as a suite and from each suite,

a fire-alarm system comprised of the components and materials and designed, installed and maintained in the manner prescribed by the regulations. 1971, c. 41, s. 6.

**7.** Every hotel four or more storeys in height and every addition four or more storeys in height made to a hotel, shall have a standpipe and hose system comprised of the components and materials, and designed, installed and maintained in the manner prescribed by the regulations. 1971, c. 41, s. 7.

**8.** Every hotel shall install and maintain portable fire extinguishers of the type and in the number and of such fire extinguisher rating in such manner and location or locations in the hotel as are prescribed by the regulations. 1971, c. 41, s. 8.

**9.** The interior and exterior finish materials of every hotel shall meet the standards prescribed by the regulations. 1971, c. 41, s. 9.

**10.** Every hotel shall have,

- (a) exit signs erected in such manner and in such locations as an inspector orders; and
- (b) direction to exit signs erected in such manner and in such locations as an inspector orders. 1971, c. 41, s. 10.

**11.** Every hotel that is not of noncombustible construction shall have smoke-proof barriers erected in such manner and in such locations as an inspector orders. 1971, c. 41, s. 11.

**12.** Notwithstanding that a hotel has a fire-alarm system installed in the manner prescribed by the regulations, where the hotel is not of noncombustible construction and is three or more storeys in height, an inspector may order the hotel to install and maintain an automatic sprinkler system having sprinkler head protection in all areas. 1971, c. 41, s. 12.

**13.** Where an inspector finds that a decoration or drape in a place of assembly, lobby, corridor, stairway or other means of egress in a hotel will propagate flame when a match is held to a sample of the material he may, whether it has been treated with a fire retardant or not, order the material to be treated or retreated or to be removed. 1971, c. 41, s. 13.

**14.** Where an inspector finds that a condition exists in a hotel that makes the hotel specially liable to fire, he may order the hotelkeeper to remedy the condition. 1971, c. 41, s. 14.

**15.**—(1) Where an inspector makes an order under this Act, he shall cause a copy of the order to be delivered to the hotelkeeper by personal service or by registered mail.

**Right of  
appeal**

(2) If the hotelkeeper feels aggrieved by the order, he may appeal within ten days from the service of the order to the Fire Marshal who shall hear and dispose of the appeal as promptly as is practicable, and he shall prepare written reasons for his decision and cause a copy of his decision and the reasons therefor to be delivered to the hotelkeeper by personal service or by registered mail.

**Powers of  
Fire Marshal**

(3) On an appeal under subsection (2), the Fire Marshal may substitute his findings or opinions for those of the inspector who made the decision appealed from and may affirm or rescind the order or make a new order in substitution therefor and has all the powers of the inspector for such purpose and the decision or order on the appeal shall stand in the place of and have a like effect under this Act as the order of the inspector.

**Right of  
application  
to court**

(4) If the hotelkeeper is dissatisfied with the decision of the Fire Marshal, he may, within ten days from the service of the decision, apply to the judge of the county or district court of the county or district in which the hotel is situate for a hearing.

**Extension of  
time for  
appeal**

(5) A judge to whom an application is made under subsection (4) may extend the time for making the application either before or after the expiration of the time fixed therein, where he is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension, and may give such direction as he considers proper consequent upon the extension.

**Hearing**

(6) Where a hotelkeeper appeals under subsection (4), the judge shall appoint a time for and hear the appeal and the judge may affirm or rescind the order or make a new order in substitution therefor and for such purpose the judge may substitute his opinion for that of the Fire Marshal and his decision is final.

**Parties**

(7) The hotelkeeper and the Fire Marshal are parties to an appeal under this section.

**Findings  
of fact**

(8) The findings of fact of a judge pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. 1971, c. 41, s. 15.

R.S.O. 1980,  
c. 484

**Powers of  
inspector**

**16.**—(1) An inspector may, for the purposes of carrying out his duties under this Act, at any reasonable time or times enter and inspect any hotel or any part thereof and may

require the hotelkeeper to produce or furnish any records or documents required to be kept under this Act or the regulations.

(2) No person shall hinder or obstruct an inspector in the performance of his duties or furnish him with false information or refuse to furnish him with information. 1971, c. 41, s. 16. <sup>Obstructing inspector</sup>

**17.**—(1) Every hotelkeeper who operates a hotel that does not conform with this Act and the regulations or who fails to comply with any order made by an inspector is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and, in addition, the judge may order the hotel to be closed until it is made to conform with this Act and the regulations or with the order of the inspector. <sup>Offence</sup>

(2) The conviction under this Act of a hotelkeeper does not operate as a bar to further prosecution under this Act for the continued failure on his part to comply with this Act and the regulations or the order of an inspector, but such continuance constitutes a new and separate offence. 1971, c. 41, s. 17. <sup>Conviction not bar to further charge</sup>

**18.** The Lieutenant Governor in Council may appoint inspectors to enforce this Act and the regulations. 1971, c. 41, s. 18. <sup>Appointment of inspectors</sup>

**19.** The Lieutenant Governor in Council may make regulations, <sup>Regulations</sup>

- (a) regulating the construction and alteration of hotels;
- (b) prescribing the design, location, identification, maintenance and lighting of means of egress from hotels and prescribing the type of hardware with which exit doors shall be equipped;
- (c) prescribing the method of construction and the materials to be used in the structural assemblies of hotels;
- (d) prescribing the design of standpipe and hose systems in hotels, prescribing the components and materials to be used in such systems and prescribing the manner in which such systems shall be installed and maintained;
- (e) providing for the exemption from this Act or the regulations or any provision thereof of any hotel or class or classes of hotels either absolutely or

for a limited period of time, and prescribing the terms and conditions thereof;

- (f) prescribing the design of fire alarm systems in hotels, prescribing the components and materials to be used in such systems and prescribing the manner in which such systems shall be installed and maintained;
- (g) regulating the interior and exterior finish materials in hotels;
- (h) requiring and regulating ventilating, air handling and cooking exhaust systems in hotels;
- (i) prescribing the number, type and location of portable fire extinguishers in hotels, their rating and the manner in which they shall be installed and maintained;
- (j) regulating the heating, cooling and air conditioning systems in hotels;
- (k) prescribing standards of housekeeping for hotels;
- (l) requiring the hotelkeeper and his staff to be trained in and to perform duties relating to fire prevention, fire protection, inspection, maintenance of equipment, supervision, fire fighting, sounding alarms, evacuating occupants, and other procedures affecting fire safety, and regulating such procedures;
- (m) controlling or prohibiting the use of any material, equipment, appliance or device in a hotel;
- (n) controlling or prohibiting exhibits and any item for display or sale in a hotel;
- (o) regulating the construction, erection, alteration, installation, removal, operation, or maintenance of any equipment, appliance or device in hotels;
- (p) prohibiting the installation or use of appliances, devices or materials in hotels;
- (q) requiring and regulating tests for building assemblies, materials, equipment and appliances in hotels and designating the testing agencies for such tests;
- (r) requiring and providing for the inspection of equipment and appliances in hotels and prescribing the frequency and the manner of such inspections;

- (s) prescribing classes of contractors and requiring, regulating and providing for the training, testing and registration of them, or any class of them;
- (t) requiring, regulating and providing for the keeping by hotelkeepers of records, statements or reports on tests, inspections, fire alarm drills and evacuation drills;
- (u) requiring and regulating fire prevention and fire protection equipment in hotels;
- (v) requiring and regulating any assembly, material, equipment, appliance or device in hotels which will reduce the likelihood of spread of fire or smoke;
- (w) requiring and regulating any equipment or assembly which will speed up or make the evacuation of a hotel safer and more orderly;
- (x) prescribing what is noncombustible construction for the purposes of this Act. 1971, c. 41, s. 19.

**20.**—(1) Subject to subsection (2), nothing in this Act or the regulations affects any by-law relating to the matters mentioned in this Act or the regulations and lawfully passed by a municipal council, or the authority of a municipal council to pass any such by-law. Municipal  
by-laws not  
affected

(2) Where conflict exists between any regulation made under this Act and any by-law passed by a municipality in the exercise of its powers, the regulation prevails. 1971, c. 41, s. 20. Conflict

**21.** Neither the granting of a permit by an authority having jurisdiction nor the approval of drawings and specifications by the Fire Marshal nor inspections made by an inspector or any other authority having jurisdiction during construction or alteration of a hotel shall in any way relieve the hotelkeeper of such hotel from full responsibility for carrying out the work in accordance with the requirements of this Act and the regulations. 1971, c. 41, s. 21. Responsi-  
bility of  
hotelkeeper



## CHAPTER 208

## Hotel Registration of Guests Act

**1.** In this Act, “hotel” means a separate building or two or more connected buildings used mainly for the purpose of catering to the needs of the travelling public by the supply of food and also by the furnishing of sleeping accommodation of not fewer than six bedrooms as distinguished from any other building or connected buildings used mainly for the purpose of supplying food and lodging by the week or otherwise commonly known as “boarding houses” or of furnishing living quarters for families and having a dining room or restaurant commonly known as “apartment houses” or “private hotels”. R.S.O. 1970, c. 212, s. 1.

Interpre-  
tation

**2.** A register shall be kept in every hotel in which shall be entered the name and usual place of residence of every person admitted as a guest in the hotel and occupying a room therein alone or with another person. R.S.O. 1970, c. 212, s. 2.

Register  
to be kept

**3.** The owner and the manager of a hotel who fails to keep the register required by section 2 or to see that the particulars required by section 2 are entered therein, or who knowingly and wilfully permits an untrue statement as to the name or place of residence of a guest to be entered in the register is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$50, and in default of payment may be imprisoned for a term of not more than three months. R.S.O. 1970, c. 212, s. 3.

Offence

**4.** Every person who applies for admission as a guest in a hotel and who registers under or represents himself as bearing some other name than his own, or who in registering or procuring admission to a hotel, makes a false statement as to his ordinary place of residence, is guilty of an offence and on conviction is liable to a fine of not less than \$20 and not more than \$200, and in default of payment may be imprisoned for a term of not more than three months. R.S.O. 1970, c. 212, s. 4.

Offence

**5.—(1)** In every room used for sleeping accommodation in a hotel there shall be kept posted in a conspicuous place a notice specifying the rates charged for the room.

Notice of  
rates to  
be posted

**(2)** Every owner and every manager of a hotel who fails to keep posted the notice required by subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$100. R.S.O. 1970, c. 212, s. 5.

Offence



## CHAPTER 209

## Housing Development Act

## 1. In this Act,

Interpre-  
tation

- (a) "building development" means a project or undertaking designed to provide, or to facilitate in any way the provision, repair, rehabilitation or improvement of, housing accommodation with or without public buildings, recreational facilities, industrial and commercial buildings or space appropriate therefor;
- (b) "building development corporation" means a corporation authorized to undertake a building development that is approved by the Lieutenant Governor in Council, and includes any authority established by a municipality to undertake a building development;
- (c) "Minister" means the Minister of Housing;
- (d) "municipality" means the corporation of a county, city, town, village or township or of a district, metropolitan or regional municipality;
- (e) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 213, s. 1; 1974, c. 31, s. 1.

## 2.—(1) The Lieutenant Governor in Council may,

L.G. in C.  
may  
advance or  
guarantee  
moneys for  
building  
develop-  
ments, etc.

- (a) guarantee moneys loaned to persons to be used in the construction of a building development;
- (b) advance moneys or guarantee moneys loaned to any building development corporation to undertake a building development;
- (c) advance moneys or guarantee moneys loaned to persons to acquire and rehabilitate housing units;
- (d) advance moneys or guarantee moneys loaned to any municipality to acquire, demolish and clear

dwelling units on land in the municipality that cannot reasonably be rehabilitated for housing purposes;

- (e) make grants or loans in aid of the capital, maintenance, operating and other costs of any building development; and
- (f) provide financial assistance to or for the benefit of any occupant or any class or classes of occupant of housing accommodation to assist in the payment of rent, mortgage payments or other charges relating to the occupancy of such accommodation. R.S.O. 1970, c. 213, s. 2 (1); 1974, c. 31, s. 2.

Use of  
certain  
lands  
restricted

(2) Where moneys are advanced or guaranteed under clause (1) (d), the land shall not be used for other than public purposes without the approval of the Minister. R.S.O. 1970, c. 213, s. 2 (2).

Grants or  
loans

**3.**—(1) The Minister, out of the moneys appropriated therefor by the Legislature, may make grants or loans to a municipality or to any person on such terms and conditions and in such amounts as are prescribed by the regulations to assist in the repair, rehabilitation, improvement or conversion of real property used or to be used for residential purposes.

Lien

(2) Where a municipality uses moneys received from the Minister under subsection (1) to make a loan to an owner of real property used or to be used for residential purposes for the purposes referred to in subsection (1), the amount of the loan, together with interest at a rate to be determined in accordance with the regulations, may be added by the clerk of the municipality to the collector's roll and collected in like manner as municipal taxes over a period fixed by the council, and such amount and interest shall, until payment thereof, be a lien or charge upon the land in respect of which the loan has been made. 1976, c. 44, s. 1 (1).

Registration  
of  
certificate

(3) A certificate signed by the clerk of the municipality setting out the amount loaned to an owner as referred to in subsection (2), including the rate of interest thereon, together with a description of the land in respect of which the loan has been made, sufficient for registration, shall be registered in the proper land registry office against the land, and, upon repayment in full to the municipality of the amount loaned and interest thereon, a certificate signed by the clerk of the municipality showing such repayment shall be similarly registered, and thereupon the lien or charge upon the land in respect of which the loan was made is discharged. 1974, c. 31, s. 3, *part*.

(4) As an alternative or in addition to adding the amount of the loan and interest to the collector's roll and registering a certificate in respect thereof as provided in subsections (2) and (3), the municipality may take from the owner a promissory note as security for the repayment of the amount loaned and interest thereon. 1976, c. 44, s. 1 (2).

Promissory  
note

4. The Minister may,

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the house building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry. R.S.O. 1970, c. 213, s. 3.

Grants for  
studies into  
housing and  
to assist  
house build-  
ing industry

5. The Minister may, for the purpose of assisting him in the carrying out of his responsibilities, appoint such advisory committees as he may consider necessary and may pay the reasonable travelling and living expenses incurred by the members of such advisory committees. R.S.O. 1970, c. 213, s. 4.

Advisory  
committees

6. Notwithstanding any other Act, any municipality, with the approval of the Lieutenant Governor in Council, may advance moneys or guarantee moneys to be advanced to any building development corporation undertaking a building development, and may issue debentures therefor. R.S.O. 1970, c. 213, s. 5.

Municipali-  
ties may  
assist in  
financing

7.—(1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the *National Housing Act* (Canada) for,

Joint  
housing  
projects  
authorized

- (a) the acquisition and development of land for housing purposes;
- (b) the construction of housing projects for sale or for rent; and
- (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality. R.S.O. 1970, c. 213, s. 6 (1); 1973, c. 2, s. 2.

R.S.O. 1970,  
c. N-10

(2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct, and manage any

Corporation  
to carry  
out building  
developments  
and housing  
projects

building development or any housing project undertaken under any such agreement or otherwise, and including power to acquire and dispose of land in its own name. 1976, c. 44, s. 2.

Provincial  
share of  
cost

(3) Any moneys required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the moneys appropriated therefor by the Legislature.

Moneys  
required by  
corporations  
for purposes  
other than  
carrying out  
agreements

(4) Any moneys required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the moneys appropriated therefor by the Legislature.

Powers of  
municipalities  
under joint  
housing  
agreements

(5) Notwithstanding any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by *The Central Mortgage and Housing Corporation Act* (Canada), pursuant to *The Housing Development Act, 1948* or this Act or a predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute moneys to and expend moneys on joint housing projects and raise moneys therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the *Municipal Act* and recoverable as such. R.S.O. 1970, c. 213, s. 6 (3-5).

1945  
(2nd Sess.),  
c. 15 (Can.)

R.S.O. 1980,  
c. 302

Payments  
in lieu  
of taxes

(6) The Crown in right of Ontario represented by the Minister may agree to pay annually to any municipality, in respect of any lands in the municipality acquired for any housing project or building development and that are exempt from municipal taxation, a sum of money calculated on any basis whatsoever but not in excess of the amount that in the opinion of the Minister of Revenue would have been payable to the municipality as taxes on such lands if they had been assessed and taxed in the usual way. 1974, c. 31, s. 4, *part.*

(7) Where an agreement under subsection (6) is in force in respect of land occupied by tenants, the land is nevertheless exempt from taxation, including local improvement rates. Tax exemption for tenant-occupied lands

(8) The right to vote of such tenants is not affected by subsection (7), and the assessment rolls and voters' lists shall be prepared in the usual manner as if subsection (7) had not been passed. R.S.O. 1970, c. 213, s. 6 (7, 8). Right to vote not affected

(9) Notwithstanding any other Act, the Lieutenant Governor in Council may authorize any municipality in or near which a housing project or building development is undertaken to do or not to do such acts or things as are considered expedient in order to avoid undue delay in the development of the housing project or building development, including the furnishing of municipal services. Power to expedite development of projects or developments

(10) Where a payment is made to a municipality under subsection (6), such payment shall be distributed by the council of the municipality to each of the bodies for which the council is required by law to levy or collect rates as if the land in respect of which the payment is made had been assessed and taxed in the usual way, and for all purposes of distribution of any part of such payment between school boards, the tenants of such land shall be deemed to be rated as tenants on the assessment roll of the municipality. 1974, c. 31, s. 4 *part*. Distribution of payments in lieu of taxes

8.—(1) The Minister may, for and in the name of Her Majesty in right of Ontario, acquire by purchase or otherwise, or, without the consent of the owner, enter upon, take and expropriate any land he considers necessary for the purposes of a housing project under section 7, or of a building development and may sell, lease or otherwise dispose of any of such land on such terms and conditions as the Minister may determine. R.S.O. 1970, c. 213, s. 7 (1); 1972, c. 129, s. 1. Acquisition of land

(2) The Minister in the exercise of his powers to take land compulsorily has all the powers conferred by the *Ministry of Government Services Act*, on the Minister of Government Services in relation to a public work, and in the application of this section where the words "the Minister", "the Ministry" or "the Crown" appear in such Act, they mean, where the context permits, the Minister under this Act. R.S.O. 1970, c. 213, s. 7 (2); 1972, c. 1, s. 1; 1973, c. 2, s. 2. Expropriation - R.S.O. 1980, c. 279

(3) The Minister shall proceed in the manner provided by the *Expropriations Act*, and the provisions of that Act apply. R.S.O. 1970, c. 213, s. 7 (3). Procedure R.S.O. 1980, c. 148

Contribution  
by  
corporations

**9.**—(1) The Crown in right of Ontario may enter into an agreement with any corporation under which the corporation will contribute moneys to any joint housing project being carried out under section 7.

Powers of  
corporations

(2) Any corporation incorporated under the laws of Ontario has power to enter into and carry out such agreement. R.S.O. 1970, c. 213, s. 8.

Interpre-  
tation

**10.**—(1) In this section, “family of low income” means a family that receives a total family income that, in the opinion of the Minister, is insufficient to permit it to rent housing accommodation adequate for its needs at the current rental market in the area in which the family lives.

Powers of  
manage-  
ment cor-  
porations

(2) With the approval of the Lieutenant Governor in Council, a corporation constituted under subsection 7 (2) may,

(a) lease privately-owned housing units for occupancy by families of low income and lease such housing units to families of low income; and

(b) if requested by the municipality in which the corporation exercises its powers,

(i) inquire into any matter relating to housing conditions or a building development in the municipality and report thereon to the municipality with its recommendations, and

(ii) undertake the management of any housing development in the municipality.

Payment of  
expenses re  
inquiry

(3) The municipality at whose request an inquiry is made under subsection (2) may pay all or any part of the expenses incurred by the corporation with respect to such inquiry.

Management  
fees

(4) Where a corporation manages a housing development at the request of a municipality, the municipality shall pay to the corporation such fees for the management of the housing development as may be prescribed by the regulations made under this Act. R.S.O. 1970, c. 213, s. 9.

Moneys  
required for  
purposes of  
Act

**11.** The moneys required by the Lieutenant Governor in Council for the purposes of this Act, except section 14, shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 213, s. 10.

**12.** The cost of administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature. Cost of administration  
R.S.O. 1970, c. 213, s. 11.

**13.**—(1) A municipality, either solely or together with one or more other persons, may incorporate under the laws of Ontario one or more non-profit housing corporations having as the objects of incorporation the provision and operation of housing accommodation with or without any public space, recreational facilities and commercial space or buildings appropriate thereto primarily for persons of low or modest income at rentals below the current rental market in the area in which the accommodation is located. Incorporation of non-profit housing corporation

(2) A municipality that incorporates a corporation as referred to in subsection (1) may own or control all or any part of the shares, capital or assets, as the case may be, of the corporation, provided however that, notwithstanding any of the provisions of the *Corporations Act* or the *Business Corporations Act*, the directors of the corporation shall not declare, nor the corporation pay, any dividends on any issued shares of the corporation, and no part of the income of the corporation shall be payable to or otherwise available for the personal benefit of any shareholder or member of the corporation and its letters patent, supplementary letters patent or articles may so provide. Provisions applicable to corporation incorporated by municipality  
R.S.O. 1980, cc. 95, 54

(3) Where a corporation is incorporated as referred to in subsection (1), the corporation shall not acquire lands for its purposes except with the approval of the Minister or except in accordance with the provisions of an official plan or a policy statement, which official plan provisions or policy statement have been approved by the Minister under section 17. Acquisition of land by corporation

(4) Section 64 of the *Ontario Municipal Board Act* does not apply to a corporation as referred to in subsection (1). Non-application of  
R.S.O. 1980, c. 347, s. 64

**14.**—(1) Notwithstanding subsection 4 (3) of the *Corporations Act*, Housing Corporation Limited, being a corporation incorporated by letters patent dated the 29th day of April, 1948, for the purpose and object of lending and investing money on mortgage of real estate, may issue bonds, debentures or debenture stock. Housing Corporation Ltd., power to issue bonds, etc.

(2) The Lieutenant Governor in Council may authorize the Treasurer of Ontario to purchase or to guarantee the payment of any notes, bonds, debentures or debenture stock issued by Housing Corporation Limited. Provincial guarantee, etc.

Advances to  
Housing  
Corporation  
Limited

(3) The Lieutenant Governor in Council may authorize the Treasurer of Ontario to make advances to Housing Corporation Limited in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient.

Advances out  
of Fund

(4) All moneys required for the purposes of this section shall be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 213, s. 13.

Regulations

**15.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing amounts of and the terms and conditions upon which money may be granted, loaned, advanced or guaranteed under this Act or any section thereof;
- (b) providing for the incorporation, constitution and management of building development authorities;
- (c) prescribing fees for the management of housing developments which may be different in respect of any one or more housing developments;
- (d) prescribing forms and providing for their use;
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 213, s. 14; 1974, c. 31, s. 6.

Interpre-  
tation

**16.** In sections 17 and 18, "housing project" means a project designed to provide housing accommodation, or to facilitate in any way the provision of housing accommodation, with or without any public space, recreational facilities and commercial space or buildings appropriate thereto. R.S.O. 1970, c. 213, s. 15.

Acquisition  
of lands for  
housing  
projects

**17.** If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing which statement has been approved by the Minister, the council of the municipality may,

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;

- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes. 1974, c. 31, s. 7.

**18.**—(1) A municipality, with the approval of the Minister, <sup>Agreements re housing projects</sup> may,

- (a) enter into an agreement with any person or governmental authority for sharing or contributing to the capital cost or the maintenance cost of a housing project, or for providing financial assistance to or for the benefit of any occupant or any class or classes of occupant of housing accommodation to assist in the payment of rent, mortgage payments or other charges relating to the occupancy of such accommodation;
- (b) enter into an agreement with any person or governmental authority undertaking a housing project to provide that certain specified uses of land in a specified area surrounding or adjacent to the project will be maintained for the period specified in the agreement. R.S.O. 1970, c. 213, s. 17 (1); 1976, c. 44, s. 3.

(2) For the purpose of subsection (1), “maintenance cost” <sup>Maintenance cost</sup> includes taxes assessed by the municipality against the housing project. R.S.O. 1970, c. 213, s. 17 (2).

**19.** To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, <sup>Temporary housing projects</sup> maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality. R.S.O. 1970, c. 213, s. 18.



## CHAPTER 210

## Human Tissue Gift Act

## 1. In this Act,

Interpre-  
tation

- (a) "consent" means a consent given under this Act;
- (b) "physician" means a person licensed under Part III of the *Health Disciplines Act*;
- (c) "tissue" includes an organ, but does not include any skin, bone, blood, blood constituent or other tissue that is replaceable by natural processes of repair;
- (d) "transplant" as a noun means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body, and in its other forms it has corresponding meanings;
- (e) "writing" for the purposes of Part II includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid. 1971, c. 83, s. 1.

R.S.O. 1980,  
c. 196

## PART I

## INTER-VIVOS GIFTS FOR TRANSPLANTS

2. A transplant from one living human body to another living human body may be done in accordance with this Act, but not otherwise. 1971, c. 83, s. 2.

Transplants  
under Act  
are lawful

3.—(1) Any person who has attained the age of majority, is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by him consent to the removal forthwith from his body of the tissue specified in the consent and its implantation in the body of another living person.

Consent for  
transplant

Consent of  
person  
under age,  
etc.

(2) Notwithstanding subsection (1), a consent given thereunder by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, and was not able to make a free and informed decision, as the case may be.

Consent is  
full authority  
to proceed

(3) A consent given under this section is full authority for any physician,

(a) to make any examination necessary to assure medical acceptability of the tissue specified therein; and

(b) to remove forthwith such tissue from the body of the person who gave the consent.

Stale  
consent  
void

(4) If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void. 1971, c. 83, s. 3.

## PART II

### POST MORTEM GIFTS FOR TRANSPLANTS AND OTHER USES

Consent by  
person for  
use of his  
body after  
death

4.—(1) Any person who has attained the age of majority may consent,

(a) in a writing signed by him at any time; or

(b) orally in the presence of at least two witnesses during his last illness,

that his body or the part or parts thereof specified in the consent be used after his death for therapeutic purposes, medical education or scientific research.

Where donor  
under age

(2) Notwithstanding subsection (1), a consent given by a person who had not attained the age of majority is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority.

(3) Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if he has reason to believe that it was subsequently withdrawn. 1971, c. 83, s. 4.

5.—(1) Where a person of any age who has not given a consent under section 4 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and his death is imminent,

Consent is  
full authority,  
exception  
by spouse,  
etc., for  
use of body  
after  
death

- (a) his spouse of any age; or
- (b) if none or if his spouse is not readily available, any one of his children who has attained the age of majority; or
- (c) if none or if none is readily available, either of his parents; or
- (d) if none or if neither is readily available, any one of his brothers or sisters who has attained the age of majority; or
- (e) if none or if none is readily available, any other of his next of kin who has attained the age of majority; or
- (f) if none or if none is readily available, the person lawfully in possession of the body other than, where he died in hospital, the administrative head of the hospital,

may consent,

- (g) in a writing signed by the spouse, relative or other person; or
- (h) orally by the spouse, relative or other person in the presence of at least two witnesses; or
- (i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person,

to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

Prohibition

(2) No person shall give a consent under this section if he has reason to believe that the person who died or whose death is imminent would have objected thereto.

Consent  
is full  
authority,  
exceptions

(3) Upon the death of a person in respect of whom a consent was given under this section the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified except that no person shall act on a consent given under this section if he has actual knowledge of an objection thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent.

Person  
lawfully in  
possession  
of body,  
exceptions

(4) In subsection (1), "person lawfully in possession of the body" does not include,

R.S.O. 1980,  
c. 93

(a) the supervising coroner or a coroner in possession of the body for the purposes of the *Coroners Act*;

R.S.O. 1980,  
c. 105

(b) the Public Trustee in possession of the body for the purpose of its burial under the *Crown Administration of Estates Act*;

(c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition; or

(d) the superintendent of a crematorium in possession of the body for the purpose of its cremation. 1971, c. 83, s. 5.

Coroner's  
direction

6. Where, in the opinion of a physician, the death of a person is imminent by reason of injury or disease and the physician has reason to believe that section 10 of the *Coroners Act* may apply when death does occur and a consent under this Part has been obtained for a *post mortem* transplant of tissue from the body, a coroner having jurisdiction, notwithstanding that death has not yet occurred, may give such directions as he thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death under section 11 of the *Coroners Act*. 1971, c. 83, s. 6.

7.—(1) For the purposes of a *post mortem* transplant, the fact of death shall be determined by at least two physicians <sup>Determination of death</sup> in accordance with accepted medical practice.

(2) No physician who has had any association with the proposed recipient that might influence his judgment shall take any part in the determination of the fact of death of the donor. <sup>Prohibition</sup>

(3) No physician who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures. <sup>Idem</sup>

(4) Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants. <sup>Exception</sup> 1971, c. 83, s. 7.

8. Where a gift under this Part cannot for any reason be used for any of the purposes specified in the consent, the subject-matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given. <sup>Where specified use fails</sup> 1971, c. 83, s. 8.

### PART III

#### GENERAL

9. No action or other proceeding for damages lies against any person for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act. <sup>Civil liability</sup> 1971, c. 83, s. 9.

10. No person shall buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof other than blood or a blood constituent, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy. <sup>Sale, etc., of tissue prohibited</sup> 1971, c. 83, s. 10.

11.—(1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person, <sup>Disclosure of information</sup>

(a) who has given or refused to give a consent ;

(b) with respect to whom a consent has been given ; or

(c) into whose body tissue has been, is being or may be transplanted,

may become known publicly.

## Exception

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection (1) does not apply. 1971, c. 83, s. 11.

## Offence

**12.** Every person who knowingly contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. 1971, c. 83, s. 13.

R.S.O. 1980,  
c. 93  
not affected

**13.** Except as provided in section 6, nothing in this Act affects the operation of the *Coroners Act*. 1971, c. 83, s. 14.

## CHAPTER 211

## Hunter Damage Compensation Act

## 1. In this Act,

Interpre-  
tation

- (a) "live stock" means cattle, goats, horses, sheep, swine or poultry;
- (b) "Minister" means the Minister of Agriculture and Food;
- (c) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 215, s. 1.

2.—(1) The Lieutenant Governor in Council may appoint persons to act as valuers for the purposes of this Act. R.S.O. 1970, c. 215, s. 2.

Appoint-  
ment of  
valuers

(2) Every agricultural representative and assistant agricultural representative is *ex officio* a valuer for the purposes of this Act. 1973, c. 111, s. 1.

Repre-  
sentatives  
*ex officio*  
valuers

3.—(1) Where death of or injury to live stock, or damage to such classes of property as are designated in the regulations, is occasioned by a hunter, the person who would have a cause of action against the hunter in respect of such death, injury or damage may make an application for compensation to the Minister in the manner prescribed in the regulations. R.S.O. 1970, c. 215, s. 3 (1).

Application  
for  
compensation

(2) Subject to subsections (3) and (4), the Minister may, in respect of an application made under subsection (1), pay to the applicant such amount as the Minister considers reasonable, but not exceeding the market value of the live stock or other property at the time of the death, injury or damage in respect of which payment is made.

Payment of  
compensation

(3) Where an applicant receives an amount under a contract of insurance by reason of the death of or injury to live stock or damage to property for which compensation is payable under this Act, for the purpose of calculating the amount of compensation the market value of the live stock or other property shall be deemed to be reduced by that amount.

Reduction  
in market  
value by  
reason of  
insurance

Amount of  
payment  
limited

(4) No payment shall be made under subsection (2) of an amount in excess of the maximum amount prescribed in the regulations for the live stock or other property. 1979, c. 54, s. 1.

Minister  
subrogated  
to rights of  
applicant

(5) Where an amount has been paid under subsection (2), the Minister is subrogated to the rights of the person to whom such amount has been paid and the Minister may maintain an action in his name or in the name of such person against any other person or persons responsible for the death, injury or damage in respect of which such amount has been paid. R.S.O. 1970, c. 215, s. 3 (5).

Paid out of  
Consolidated  
Revenue  
Fund

4. The moneys required for the purposes of this Act shall be paid out of such moneys as are appropriated therefor by the Legislature. R.S.O. 1970, c. 215, s. 4.

Regulations

5. The Lieutenant Governor in Council may make regulations,

- (a) designating classes of persons to whom this Act shall not apply;
- (b) designating classes of property to which section 3 applies;
- (c) prescribing the manner of making an application for compensation;
- (d) prescribing the conditions under which an application for compensation may be made;
- (e) prescribing the conditions under which compensation may be paid;
- (f) prescribing maximum amounts for live stock and other property for the purposes of subsection 3 (4);
- (g) prescribing forms and providing for their use;
- (h) prescribing the duties of valuers;
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 215, s. 5; 1979, c. 54, s. 2.

## CHAPTER 212

## Hypnosis Act

1.—(1) The Minister of Health shall administer and enforce this Act and he may designate any officer of the Ministry of Health or any medical officer of health or he may appoint any legally qualified medical practitioner for the purpose of making any investigation or inquiry necessary therefor. R.S.O. 1970, c. 216, s. 1 (1); 1972, c. 1, s. 1. Minister of Health to administer Act

(2) Any person designated or appointed under subsection (1) has all the powers of a medical officer of health under the *Public Health Act*. R.S.O. 1970, c. 216, s. 1 (2). Powers of designees  
R.S.O. 1980, c. 409

2. Subject to section 3, no person shall hypnotize or attempt to hypnotize another person. R.S.O. 1970, c. 216, s. 2. Hypnosis prohibited

3. Section 2 does not apply to, Exceptions

(a) any legally qualified medical practitioner using hypnosis in the practice of his profession;

(b) any dentist licensed under Part II of the *Health Disciplines Act* using hypnosis in the practice of his profession; R.S.O. 1980, c. 196

(c) any psychologist registered under the *Psychologists Registration Act* using hypnosis in the practice of his profession on the request of, or in association with, a legally qualified medical practitioner; R.S.O. 1980, c. 404

(d) any *bona fide* student registered in a course leading to qualification in one of the professions mentioned in this section practising hypnosis for the purpose of study under the instruction and supervision of a legally qualified medical practitioner, a dentist licensed under Part II of the *Health Disciplines Act* or a psychologist registered under the *Psychologists Registration Act*; or

(e) any member of any class of persons designated by the regulations made under this Act. R.S.O. 1970, c. 216, s. 3.

4. The Lieutenant Governor in Council may make regulations designating classes of persons to whom section 2 does Regulations

not apply and prescribing the terms, conditions and circumstances under which members of any designated class may use hypnosis. R.S.O. 1970, c. 216, s. 4.

Offence

**5.** Every person who contravenes any of the provisions of this Act is guilty of an offence and on conviction is liable for the first offence to a fine of not less than \$100 and not more than \$1,000 or to imprisonment for a term of not more than six months, or to both, and for any subsequent offence to a fine of not less than \$200 and not more than \$2,000 or to imprisonment for a term of not more than nine months, or to both. R.S.O. 1970, c. 216, s. 5.

Limitations

**6.** Every prosecution under this Act shall be commenced within one year from the date of the alleged offence. R.S.O. 1970, c. 216, s. 6.

## CHAPTER 213

## Income Tax Act

## PART I—INTERPRETATION

## 1.—(1) In this Act,

Interpre-  
tation

1. “agreeing province” means a province that has entered into an agreement with the Government of Canada under which the Government of Canada will collect taxes payable under the income tax statute of that province and will make payments to that province in respect of the taxes so collected;
2. “amount” means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing;
3. “assessment” includes a reassessment;
4. “business” includes a profession, calling, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment;
5. “collection agreement” means an agreement entered into under subsection 50 (1);
6. “corporation” includes an incorporated company and a “corporation incorporated in Canada” includes a corporation incorporated in any part of Canada before or after it became part of Canada;
7. “deputy head” means the Deputy Minister of Revenue, or, where a collection agreement is entered into, means the Deputy Minister of National Revenue for Taxation;
8. “employed” means performing the duties of an office or employment;
9. “employee” includes an officer;
10. “employer”, in relation to an officer, means the person from whom the officer receives his remuneration;

R.S.C. 1952,  
c. 148

11. "Federal Act " means the *Income Tax Act* (Canada);
12. "Federal Regulations" means the regulations made pursuant to the Federal Act;
13. "fiscal period" means a fiscal period determined in accordance with and for the purposes of the Federal Act;
14. "income tax statute" means, with reference to an agreeing province, the law of that province that imposes a tax similar to the tax imposed under this Act;
15. "individual" means a person other than a corporation, and includes a trust or estate as defined in subsection 104 (1) of the Federal Act;
16. "loss" means a loss as determined in accordance with and for the purposes of the Federal Act;
17. "Minister" means the Minister of National Revenue for Canada, but in any provision of the Federal Act that is incorporated by reference in this Act, unless a collection agreement has been entered into, a reference to the Minister shall be read and construed for the purposes of this Act as a reference to the Treasurer;
18. "permanent establishment" means permanent establishment as defined in the Federal Regulations;
19. "person", or any word or expression descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;
20. "prescribed", in the case of a form or the information to be given on a form, means prescribed by order of the Provincial Minister, and, in any other case, means prescribed by regulation;
21. "province" does not include the Yukon Territory;
22. "Provincial Minister" means the Minister of Revenue;

23. "Receiver General for Canada" means the Receiver General for Canada, but in any provision of the Federal Act that is incorporated by reference in this Act, unless a collection agreement is entered into, a reference to the Receiver General for Canada shall be read and construed for the purposes of this Act as a reference to the Treasurer;
24. "regulation" means a regulation made under this Act;
25. "taxable income" means taxable income as determined in accordance with and for the purposes of the Federal Act subject to variation on objection or on appeal, if any, in accordance with the Federal Act;
26. "taxation year" means,
- i. in the case of an individual, a calendar year, and
  - ii. in the case of an estate or trust arising on death, notwithstanding subparagraph i, a taxation year as defined in paragraph 104 (23) (a) of the Federal Act,

and, when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year;

27. "taxpayer" includes any person whether or not liable to pay tax;
28. "Treasurer" means the Treasurer of Ontario and Minister of Economics, or where a collection agreement is entered into, means,
- i. in relation to the remittance of any amount as or on account of tax payable under this Act, the Receiver General for Canada, and
  - ii. in relation to any other matter, the Minister. R.S.O. 1970, c. 217, s. 1 (1); 1971 (2nd Sess.), c. 1, s. 1 (2, 3); 1972, c. 1, s. 106; 1972, c. 100, s. 1; 1978, c. 76, s. 1.

Idem

(2) The expression "last day of the taxation year" shall, in the case of an individual who resided in Canada at any time in the taxation year but ceased to reside in Canada before the last day thereof, be deemed to be a reference to the last day in the taxation year on which he resided in Canada.

Idem

(3) The tax payable by a taxpayer under this Act or under Part I of the Federal Act means the tax payable by him as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with this Act or Part I of the Federal Act, as the case may be.

Idem

(4) For the purposes of this Act, except where they are at variance with the definitions contained in this section, the definitions and interpretations contained in or made by regulation under the Federal Act apply.

Idem

(5) In any case of doubt, the provisions of this Act shall be applied and interpreted in a manner consistent with similar provisions of the Federal Act. R.S.O. 1970, c. 217, s. 1 (2-5).

## PART II—INCOME TAX

### DIVISION A—LIABILITY FOR TAX

Income  
tax on  
individuals

**2.** An income tax shall be paid as hereinafter required for each taxation year by every individual,

- (a) who was resident in Ontario on the last day of the taxation year; or
  - (b) who, not being resident in Ontario on the last day of the taxation year, had income earned in the taxation year in Ontario as defined in clause 3 (6)
- (b). 1971 (2nd Sess.), c. 1, s. 2.

### DIVISION B—COMPUTATION OF TAX

#### INDIVIDUAL INCOME TAX

Rate,  
individuals

**3.—(1)** The tax payable under this Act for a taxation year by an individual who resided in Ontario on the last day of the taxation year and had no income earned in the taxation year outside Ontario is the percentage of the tax payable under the Federal Act for that year specified in subsection (5).

Idem

(2) The tax payable under this Act for a taxation year by an individual,

- (a) who resided in Ontario on the last day of the taxation year but had income earned in the taxation year outside Ontario; or

- (b) who did not reside in Ontario on the last day of the taxation year but had income earned in the taxation year in Ontario,

is the amount that bears the same relation to the percentage of the tax payable under the Federal Act for that year specified in subsection (5) that his income earned in the taxation year in Ontario bears to his income for the year. R.S.O. 1970, c. 217, s. 3 (1, 2).

(3) In addition to the tax payable under subsections (1) and (2), an individual, other than a trust, who resided in Ontario on the 31st day of December, 1978 shall pay a tax for the 1978 taxation year equal to the amount deductible by him pursuant to any provision of the Federal Act based on paragraph 13 of the Notice of Ways and Means Motion to Amend the *Income Tax Act* (Canada) tabled in the House of Commons on April 10th, 1978. Federal  
abatement

(4) The tax payable under subsection (3) shall not be taken into consideration in determining the payments required to be made by section 12 or 13 or in determining any payment or deduction authorized by section 7. 1978, c. 20, s. 1. Instalment  
payments  
not affected

(5) For the purposes of this section, the percentage of the tax payable under the Federal Act to be used for computing the tax payable under this section is, Idem

- (a) 16 per cent in respect of the 1962 taxation year;
- (b) 17 per cent in respect of the 1963 taxation year;
- (c) 18 per cent in respect of the 1964 taxation year;
- (d) 21 per cent in respect of the 1965 taxation year;
- (e) 24 per cent in respect of the 1966 taxation year;
- (f) 28 per cent in respect of the 1967, 1968, 1969 and 1970 taxation years;
- (g) 27.5 per cent in respect of the 1971 taxation year;
- (h) 30.5 per cent in respect of the 1972, 1973, 1974, 1975 and 1976 taxation years; and
- (i) 44 per cent in respect of the 1977, 1978, 1979 and 1980 taxation years. R.S.O. 1970, c. 217, s. 3 (3); 1971 (2nd Sess.), c. 1, s. 3 (1); 1977, c. 6, s. 1 (1, 2); 1979, c. 15, s. 1; 1980, c. 25, s. 1.

(6) In this section,

- (a) "tax payable under the Federal Act" means the amount that, but for section 120 of the Federal Act, would be the tax payable by a taxpayer under

Interpre-  
tation

Part I of that Act for the taxation year in respect of which the expression is being applied computed as if the taxpayer were not entitled to any deduction under section 122.1, 126 or 127 of that Act;

- (b) "income earned in the taxation year in Ontario" means the income earned in the taxation year in Ontario as determined in accordance with regulations made under paragraph 120 (4) (a) of the Federal Act;
- (c) "income earned in the taxation year outside Ontario" means income for the year minus income earned in the taxation year in Ontario;
- (d) "income for the year" means,
  - (i) in the case of an individual resident in Canada during part only of the taxation year in respect of whom section 114 of the Federal Act applies, the aggregate of,
    - (A) his income for the period or periods in the year referred to in paragraph 114 (a) of the Federal Act as determined in accordance with and for the purposes of the Federal Act, and
    - (B) his income for the portion of that year that is not included in the period or periods referred to in sub-subclause (A) computed under paragraphs 115 (1) (a), (b) and (c) of the Federal Act as though such portion of the year were the whole taxation year,
  - (ii) in the case of an individual not resident in Canada at any time in the taxation year, his income for the year as computed under paragraphs 115 (1) (a), (b) and (c) of the Federal Act, and
  - (iii) in the case of any other individual, his income for the year as determined in accordance with and for the purposes of the Federal Act. R.S.O. 1970, c. 217, s. 3 (4); 1971 (2nd Sess.), c. 1, s. 3 (3-5); 1972, c. 100, s. 2; 1978, c. 76, s. 2 (1).

Special  
table

(7) An individual who, under the Federal Act, pays tax computed in accordance with subsection 117 (6) thereof may, in lieu of the tax under subsection (1), pay a tax computed in accordance with a prescribed table which shall be prepared in accordance with the following rules:

1. The table shall be divided into ranges of amounts not exceeding \$10 each and specifying the tax payable on every amount taxable within each range.
2. The tax payable on amounts taxable within one of the ranges referred to in paragraph 1 shall be the amount in dollars and even tenths parts thereof that is nearest to the aggregate of the taxes otherwise payable under subsection (1) on the average of the highest and lowest amounts in the range. R.S.O. 1970, c. 217, s. 3 (5); 1971 (2nd Sess.), c. 1, s. 3 (6).

(8) Where an individual resided in Ontario on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which any non-business-income tax was paid by him to the government of a country other than Canada, he may deduct from the tax payable by him under this Act for that taxation year an amount equal to the lesser of,

Foreign  
tax credit

- (a) the amount, if any, by which any non-business-income tax paid by him for the year to the government of such other country exceeds the amount claimed under the Federal Act as a deduction for that taxation year by virtue of subsection 126 (1) of that Act; or
- (b) that proportion of the tax otherwise payable under this Act for that taxation year that,
  - (i) the aggregate of the taxpayer's income from sources in that country,
    - (A) for that year, if section 114 of the Federal Act is not applicable, or
    - (B) if section 114 of the Federal Act is applicable, for the period or periods in the year referred to in paragraph (a) thereof,

on the assumption that,

- (C) no businesses were carried on by him in that country, and
- (D) no amount was deducted under subsection 91 (5) of the Federal Act in computing his income for the year,

is of,

- (ii) the taxpayer's income earned in Ontario,

(A) for the year, if section 114 of the Federal Act is not applicable, or

(B) if section 114 of the Federal Act is applicable, for the period or periods in the year referred to in paragraph (a) thereof,

minus any amounts deductible under section 110.1 or paragraph 111 (1) (b) or section 112 of the Federal Act for the year or such period or periods, as the case may be. 1971 (2nd Sess.), c. 1, s. 3 (7); 1976, c. 12, s. 1; 1977, c. 6, s. 1 (3).

#### Definitions

(9) For the purposes of subsection (8),

(a) the non-business-income tax paid by an individual to the government of a country other than Canada in respect of his income for a year is the non-business-income tax paid by him to the government of that country in respect of that year as computed under paragraph 126 (7) (c) of the Federal Act for the purposes of that Act; and

(b) the expressions "tax payable by him under this Act" and "tax otherwise payable under this Act" refer to the tax, other than any tax payable pursuant to subsection (3), calculated under this Act without the deduction authorized by subsection 7 (2) or (6). 1972, c. 146, s. 1 (2); 1975, c. 16, s. 1; 1978, c. 76, s. 2 (2).

#### Capital gains refund to mutual fund trust

(10) Where an amount is to be refunded to a trust in respect of a taxation year pursuant to section 132 of the Federal Act, the Minister shall, subject to subsection (11), at such time and in such manner as is provided for in section 132 of the Federal Act, refund to the trust an amount (in this section referred to as its "capital gains refund" for the year) equal to that proportion of the amount of the refund for the year calculated under subsection 132 (1) of the Federal Act that,

(a) the percentage obtained by multiplying the percentage referred to in subsection (5) for the year times the percentage referred to in paragraph 122 (3) (a) of the Federal Act for the year,

is of

(b) the percentage referred to in subparagraph 132 (4) (b) (i) of the Federal Act for the year.

(11) For the purpose of computing the capital gains refund under subsection (10) for a trust in respect of a taxation year, where the trust had income earned in the taxation year outside Ontario, the refund shall be that proportion of the capital gains refund for the year otherwise determined under subsection (10) that the trust's income earned in the taxation year in Ontario is of its income for the year.

Income  
outside  
Ontario

(12) Instead of making a refund that might otherwise be made under subsection (10), the Minister may, where the trust is liable or about to become liable to make any payment under this Act, apply to that other liability the amount that would otherwise be refunded, and he shall notify the trust of that action. 1973, c. 21, s. 1.

Application  
to other  
liability

## DIVISION C—SPECIAL CASES

### FARMERS, FISHERMEN

4:—(1) Where an individual whose chief source of income has been farming or fishing during a taxation year (in this section referred to as the "year of averaging") has filed an election in accordance with subsection 119 (1) of the Federal Act for the year of averaging, the tax payable under this Part for the year of averaging is an amount determined by the following rules:

Averaging  
for  
farmers and  
fishermen

- (a) determine the amount (in this section referred to as the "average tax") for each year in the averaging period (which, in this section, has the meaning given to that expression under section 119 of the Federal Act) equal to the tax that would be payable under the Federal Act, within the meaning of section 3 of this Act, if the taxable income for the year were the average net income for the year within the meaning of paragraph 119 (1) (c) of the Federal Act;
- (b) determine the amount (in this section referred to as the "provincial tax") for each year in the averaging period equal to the tax that would be payable under this Part for the year if the tax that would be payable under the Federal Act for the year, within the meaning of section 3 of this Act, were the average tax for the year;
- (c) deduct from the aggregate of the provincial taxes as determined under clause (b) for the years in the

averaging period the aggregate of the taxes payable under this Part for the preceding years (which, in this section, has the meaning given to that expression under section 119 of the Federal Act),

and the remainder obtained under clause (c) is the tax payable under this Part for the year of averaging. R.S.O. 1970, c. 217, s. 5 (1); 1971 (2nd Sess.), c. 1, s. 5 (1-3).

Idem

(2) Subsection (1) applies only in the case of an individual whose chief source of income throughout the averaging period was from farming or fishing. 1977, c. 6, s. 2.

Idem

(3) For the purposes of this Act, where the tax payable by an individual under this Part for the year of averaging would, but for subsection (2), be an amount determined under subsection (1), the tax that would have been payable by the individual under the Federal Act for the year of averaging, within the meaning of section 3 of this Act, had no election been made by him under section 119 of the Federal Act for that year, shall be deemed to be the tax payable under the Federal Act by the individual for the year of averaging. R.S.O. 1970, c. 217, s. 5 (3); 1971 (2nd Sess.), c. 1, s. 5 (5).

Idem

(4) Where this section, except subsection (3), is applicable to the computation of a taxpayer's tax for a taxation year and the aggregate of the taxes payable under this Part for the preceding years exceeds the aggregate of the provincial taxes as determined under clause (1) (b) for the years in the averaging period, the excess shall be deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed.

Idem

(5) The provisions of this Part relating to the assessment of tax, interest and penalties apply with necessary modifications to an assessment whereby, for the purposes of this section, it is determined by the Provincial Minister that no tax is payable under this Part for the year of averaging or that an overpayment has been made as described in subsection (4). R.S.O. 1970, c. 217, s. 5 (4, 5).

Idem

(6) Where an election for a year of averaging filed under subsection 119 (1) of the Federal Act has been revoked by the taxpayer in accordance with subsection 119 (5) of the Federal Act, subsection (1) of this section is not applicable in determining the tax payable under this Part for the year of averaging. 1972, c. 100, s. 3.

EXEMPTIONS

5. No tax is payable under this Act by any person for a period when that person was exempt from tax by virtue of subsection 149 (1) of the Federal Act, and any definitions or descriptions in the Federal Act applying to any such person apply with necessary modifications for the purposes of this Act unless otherwise provided. R.S.O. 1970, c. 217, s. 6; 1971 (2nd Sess.), c. 1, s. 6. Exemptions

6. Where the taxable income of an individual for a taxation year does not exceed \$1,680 or such other amount as is prescribed for a particular taxation year, no tax is payable under this Act by the individual for the taxation year. 1976, c. 12, s. 2; 1977, c. 6, s. 3. No tax payable in certain cases

7.—(1) In this section,

Interpretation

(a) “housing unit” includes any premises that an individual ordinarily occupies and inhabits as his residence in the taxation year, but does not include premises that are part of a chronic care facility or other similar institution that is prescribed, or that are part of any charitable institution, home for special care, home for the aged, public nursing home or private nursing home, except when such excluded premises are occupied and inhabited by an individual of a class prescribed for the purpose of this clause;

(b) “individual” does not include a trust or estate as defined in subsection 104 (1) of the Federal Act;

(c) “municipal tax” means,

(i) taxes for municipal and school purposes levied in respect of real property in Ontario that is assessed as residential or farm property,

(ii) taxes levied for local improvements to real property in Ontario,

(iii) taxes levied under the *Provincial Land Tax Act* or the *Local Roads Boards Act*, and R.S.O. 1980, cc. 399, 251

(iv) such other taxes or special rates as are prescribed in the regulations,

but "municipal tax" does not include any tax or rate that was payable prior to the 1st day of January, 1972;

(d) "occupancy cost" means,

(i) municipal tax paid in the taxation year in respect of a principal residence of the principal taxpayer or his spouse to the extent that such principal residence is beneficially owned by them or either of them or is held in trust for the use and occupation of them or either of them and their dependants as a principal residence, or

(ii) 20 per cent of,

A. municipal tax paid in the taxation year in respect of a principal residence that is not beneficially owned by the principal taxpayer and his spouse or either of them or is not held in trust for them or either of them and their dependants, but only to the extent that such municipal tax is included by the owner of such principal residence in computing his taxable income under the Federal Act for the taxation year, and

B. rent paid in the taxation year for occupation of a principal residence of the principal taxpayer where such rent is paid by or on behalf of the principal taxpayer or his spouse and is calculated to exclude all payments on account of meals or board and all payments of rent for occupation prior to the 1st day of January, 1980,

and does not include any amount included as the occupancy cost of an individual for the purpose of a grant under the *Ontario Pensioners Property Tax Assistance Act*;

R.S.O. 1980,  
c. 352

(e) "principal residence" means a housing unit in Ontario that was during the taxation year occupied by the principal taxpayer as his principal residence, and that is designated by the principal taxpayer in prescribed manner as a principal residence of his in the taxation year;

(f) "principal taxpayer" means an individual who, on the last day of the taxation year, occupies and

inhabits a principal residence except when that individual, on the last day of the taxation year, occupies and inhabits a principal residence with his spouse, in which case "principal taxpayer" means that spouse who has the higher taxable income for the taxation year, but "principal taxpayer" does not include any individual who on the last day of the taxation year was,

- (i) under the age of sixteen years,
- (ii) under the age of twenty-one years and residing in the principal residence of a principal taxpayer or his spouse either of whom claims such individual as a dependant in that taxation year,
- (iii) entitled to claim the exemption from tax granted in paragraph 149 (1) (a) or (b) of the Federal Act,
- (iv) an individual, or a member of the family of such individual, on active military service as a member of the armed forces of a country other than Canada and was not a Canadian citizen,
- (v) an individual who, by virtue of any agreement, convention or treaty entered into by Canada with another country, was not required to pay tax under the Federal Act, or
- (vi) an eligible person, as defined by the *Ontario Pensioners Property Tax Assistance Act*, or the spouse of such eligible person; R.S.O. 1980,  
c. 352
- (g) "recorded agent" means a person on record with the Commission on Election Contributions and Expenses as being authorized to accept contributions on behalf of a political party, constituency association or candidate registered under the *Election Finances Reform Act*; R.S.O. 1980,  
c. 134
- (h) "registered candidate" with respect to an election of a member or members to serve in the Assembly, means a person who has been registered as a candidate for such election by the Commission on Election Contributions and Expenses and whose name has not been deleted from the register of candidates maintained by the Commission with respect to such election;

R.S.O. 1980,  
c. 134

(i) "registered constituency association" means a registered constituency association within the meaning given to that expression by the *Election Finances Reform Act*;

(j) "registered party" means a registered party within the meaning given to that expression by the *Election Finances Reform Act*. 1972, c. 146, s. 2, *part*; 1973, c. 21, s. 2 (1-3); 1973, c. 153, s. 2 (1); 1975, c. 16, s. 3 (1, 2); 1980, c. 25, s. 2 (1-3).

Tax  
credits

(2) Every individual resident in Ontario on the last day of the taxation year may deduct from the tax otherwise payable by him under this Act the amount not in excess of \$500 by which the aggregate of the tax credits that are described in clauses (a) and (b) and to which he is entitled exceeds 2 per cent of his taxable income for the taxation year,

(a) where the individual is a principal taxpayer, a tax credit equal to the sum of,

(i) the lesser of his occupancy cost for the taxation year or \$180, and

(ii) an amount equal to 10 per cent of his occupancy cost for the taxation year; and

(b) a tax credit of an amount equal to 1 per cent of the total of those deductions that are authorized by section 109 of the Federal Act and that have been claimed by the individual entitled to claim them in his return filed in accordance with the Federal Act, but the tax credit described in this clause may not be claimed by an individual,

(i) who, on the last day of the taxation year, is an individual described in subclause (1) (f) (i), (iii), (iv) or (v),

(ii) with respect to whom any other taxpayer resident in Canada on the last day of the taxation year has, in computing his taxable income under the Federal Act, claimed in his return filed in accordance with that Act a deduction authorized by paragraph 109 (1) (a), (b), (d), (e), (f) or (g) of that Act for any portion of the taxation year, or

(iii) who, on the last day of the taxation year, is an individual entitled to receive in respect of the taxation year a grant under section 7 of the

*Ontario Pensioners Property Tax Assistance Act*, R.S.O. 1980,  
1973, c. 153, s. 2 (2); 1974, c. 91, s. 2 (1); 1975, c.  
16, s. 3 (3); 1976, c. 81, s. 2; 1980, c. 25, s. 2 (4-6).  
c. 352

(3) Where, by virtue of the application of section 6, an individual has no tax payable under this Act before making any deduction to which he is entitled under subsection (2) or (6), he shall, for the purpose of computing the deduction to which he is entitled under subsection (2), be deemed to have no taxable income. 1975, c. 16, s. 3 (4). Taxable  
income  
deemed nil

(4) Where, during the taxation year, the principal residence of a principal taxpayer is in a students' residence that is prescribed in the regulations, the occupancy cost for every principal taxpayer so resident shall be deemed to be \$25 for that portion of the taxation year during which a prescribed students' residence was the principal residence of the principal taxpayer. 1972, c. 146, s. 2, *part*; 1978, c. 11, s. 2 (1). Deemed  
occupancy  
cost for  
students

(5) Subject to subsection (12), where an individual dies in the taxation year having had a principal residence immediately before his death, and he or his spouse has paid any rental or municipal tax in relation to the principal residence, the legal representative of such deceased individual may claim from the tax otherwise payable under this Act for the portion of the taxation year during which the deceased lived the deduction that could have been claimed under subsection (2) in relation to the amount so paid by the deceased or by his spouse as if the deceased taxpayer had been the principal taxpayer in relation to such principal residence. 1972, c. 146, s. 2, *part*; 1974, c. 91, s. 2 (2). Deceased  
taxpayer's  
credit

(6) In respect of the aggregate of amounts (the aggregate of which amounts is hereafter in this subsection referred to as "the amount contributed") that are contributions for the purposes of the *Election Finances Reform Act*, and that are contributed in the taxation year by an individual to registered candidates at an election of a member or members to serve in the Assembly, to registered constituency associations or to registered parties, every individual resident in Ontario on the last day of the taxation year may deduct from the amount by which his tax payable under this Act for that taxation year calculated without reference to this section exceeds the amount of the deduction to which he is entitled under subsection (2) for the taxation year, Tax credit  
for election  
contributions  
R.S.O. 1980,  
c. 134

(a) 75 per cent of the amount contributed if the amount contributed does not exceed \$100;

(b) \$75 plus 50 per cent of the amount by which the amount contributed exceeds \$100 if the amount

contributed exceeds \$100 and does not exceed \$550;  
or

(c) the lesser of,

(i) \$300 plus  $33\frac{1}{3}$  per cent of the amount by which the amount contributed exceeds \$550 if the amount contributed exceeds \$550, and

(ii) \$500,

provided that payment of each amount that is included in the amount contributed is proven by filing with the Minister receipts that are signed by a recorded agent of the registered candidate, registered constituency association or registered party, as the case may be, and that contain the information prescribed to be shown on such receipts. 1975, c. 16, s. 3 (5).

Application  
of refund

(7) The amount by which the deduction to which an individual is entitled under subsection (2) exceeds his tax payable under this Act for the taxation year calculated without reference to this section may be applied by the Treasurer to pay any,

(a) tax, interest or penalty owing by the individual for that or any prior taxation year under this Act, the income tax statute of any agreeing province, or the Federal Act; and

(b) contribution, penalty or interest owing by the individual for that or any prior taxation year as a result of payments required from him under the *Canada Pension Plan Act* (Canada); and

R.S.C. 1970,  
c. C-5

(c) premium, interest or penalty owing by the individual for that or any prior taxation year under the *Unemployment Insurance Act, 1971* (Canada),

1970-71-72,  
c. 48 (Can.)

and the part of the amount not so applied shall be paid to the individual. 1973, c. 21, s. 2 (4); 1973, c. 153, s. 2 (3).

Occupancy  
cost for  
two or more  
principal  
residences

(8) Where a principal taxpayer has occupied more than one principal residence in the taxation year, he shall, in calculating his occupancy cost, take into account only that portion of his total occupancy cost in the taxation year for each principal residence that is in the same ratio to his total occupancy cost in the taxation year for that principal residence as the number of days in the taxation year that the principal taxpayer occupied that principal residence is to the number of days for which such occupancy cost was paid for that principal residence, but no principal taxpayer shall claim occupancy cost for more than one principal residence during the same period of time. 1972, c. 146, s. 2, *part*.

(9) Where two or more principal taxpayers together occupy and inhabit the same principal residence in the taxation year, the occupancy cost thereof shall be allocated to each such principal taxpayer according to his beneficial ownership in the principal residence or according to the portion of the rent for the principal residence that was paid in respect of the occupation thereof by each such principal taxpayer in the taxation year, as the case may be. 1980, c. 25, s. 2 (7).

Joint  
occupation  
of principal  
residence

(10) Where a principal taxpayer or his spouse, instead of paying full rent for the occupation of their principal residence that is not owned by them or either of them, furnishes work or services to the owner or lessee of the principal taxpayer's principal residence, the value of the benefit that the principal taxpayer or his spouse receives from paying less than full rent may, for the purposes of determining the principal taxpayer's occupancy cost, be included by the principal taxpayer as part of the rent that he or his spouse has paid with respect to their principal residence, but the amount of such benefit may be so included only to the extent that the benefit is included as part of the income of the principal taxpayer or his spouse for that taxation year computed for the purpose of determining the tax payable under Part I of the Federal Act by either of them.

Imputed  
rent

(11) Notwithstanding clause (1) (f), if an individual occupies and inhabits with his spouse a principal residence on the last day of the taxation year, and,

Deemed  
principal  
taxpayer

(a) if that individual and his spouse have the same amount of taxable income in the taxation year or have no taxable income in the taxation year, they may agree between them which of them shall claim the deduction permitted under subsection (2), and the individual thus agreed upon shall be deemed to be the principal taxpayer; and

(b) if the individual and his spouse married in that taxation year, the spouse having the lower taxable income and not otherwise disqualified as a principal taxpayer under clause (1) (f) shall be deemed to be a principal taxpayer in respect of occupancy cost for a principal residence inhabited by that spouse in the taxation year and prior to the marriage, provided that such occupancy cost is not included in the occupancy cost of the other spouse. 1980, c. 25, s. 2 (8).

(12) For the purposes of this section,

Where no  
deduction  
may be made

(a) where an individual or someone on his behalf is entitled to file returns under the Federal Act in respect of the individual's income for more than one

taxation year ending in the same calendar year, the deduction to which the individual may be entitled under subsections (2) and (6) may be claimed only with respect to that taxation year that ends on or next before the last day of the calendar year;

(b) no deduction under subsections (2) and (6) may be claimed in a return,

(i) filed pursuant to an election made under the provisions of subsection 70 (2), subsection 104 (23), or subsection 150 (4) of the Federal Act, or

(ii) filed on behalf of an individual by a trustee in bankruptcy pursuant to the provisions of paragraph 128 (2) (e) or (h) of the Federal Act;

and

(c) notwithstanding clause (a), where an individual is entitled to file returns under the Federal Act in respect of more than one taxation year ending in the same calendar year, the individual, with respect to the taxation year ending on or next before the last day of the calendar year may,

(i) in computing the amount of the tax credit described in clause (2) (a), determine his occupancy cost to be the amount that would be his occupancy cost for the whole of that calendar year excluding any portion of that occupancy cost so determined that has been taken into account by the spouse of that individual in computing the amount of the tax credit described in clause (2) (a) for that calendar year, and

(ii) compute the deduction to which he is entitled under subsection (6) as though the expression "the calendar year" were substituted for "the taxation year" where it first appears in that subsection. 1976, c. 12, s. 3.

Limitation  
on unclaimed  
deductions

(13) Where it is established to the Minister's satisfaction that, in respect of a particular taxation year, an individual was entitled to a deduction under subsection (2) exceeding the amount of the deduction allowed to him under subsection (2) for that taxation year, the amount of such excess (hereinafter called the "additional deduction") may be deducted from the individual's tax otherwise payable under this Act that is payable at the time of or next after the establishing of the amount of the additional deduction, and if the amount of the additional deduction, together with the amount of any deduction under subsection (2) to

which the individual is then entitled, exceeds the tax otherwise payable under this Act by the individual at the time of or next after the establishing of the amount of the additional deduction, the amount of such excess shall be paid to the individual by the Treasurer in accordance with subsection (7), provided that no claim to establish a deduction or an additional deduction under this section may be made after four years from the end of the particular taxation year with respect to which a deduction under subsection (2) could first have been made. 1974, c. 91, s. 2 (3); 1978, c. 11, s. 2 (2).

DIVISION D—RETURNS, ASSESSMENTS,  
PAYMENT AND APPEALS

RETURNS

8.—(1) A return for each taxation year for which a tax Returns is payable under this Act shall, without notice or demand therefor, be filed with the Provincial Minister in prescribed form and containing prescribed information,

- (a) in the case of a person who has died without making the return, by his legal representatives, within six months from the day of death;
- (b) in the case of an estate or trust, within ninety days from the end of the year;
- (c) in the case of any other person, on or before the 30th day of April in the next year, by that person or, if he is unable for any reason to file the return, by his guardian, curator, tutor, committee or other legal representative; or
- (d) in a case where no person described by clause (a) or (c) has filed the return, by such person as is required by notice in writing from the Provincial Minister to file the return, within such reasonable time as the notice specifies.

(2) Whether or not he is liable to pay tax under this Act Return on demand for a taxation year and whether or not a return has been filed under subsection (1) or (3), every person shall, on demand by registered letter from the Provincial Minister, file, within such reasonable time as is stipulated in the registered letter, with the Provincial Minister in prescribed form and containing prescribed information a return for the taxation year designated in the letter.

(3) Every trustee in bankruptcy, assignee, liquidator, Trustees,  
etc. curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return for a taxation year as required by this section shall file a return in pre-

scribed form for that year in respect of that person. R.S.O. 1970, c. 217, s. 7 (1-3).

Death of  
partner,  
proprietor

(4) Where a partner or an individual who is a proprietor of a business died after the close of a fiscal period but before the end of the calendar year in which the fiscal period closed, a separate return of the taxpayer's income as a member of the partnership or as a proprietor of the business, after the close of the fiscal period to the time of death may be filed and, if such a separate return is filed, the tax under this Part shall be paid on the taxpayer's income as such member or proprietor after the close of the fiscal period to the time of death as if that income were the income of another person. 1971 (2nd. Sess.), c. 1, s. 8.

#### ESTIMATE OF TAX

Estimate

9. Every person required by section 8 to file a return shall in the return estimate the amount of tax payable. R.S.O. 1970, c. 217, s. 8.

#### ASSESSMENT

Rules re  
assessment

10.—(1) The Provincial Minister shall, with all due despatch, examine each return required to be filed under this Act and assess the tax for the taxation year and the interest and penalties, if any, payable.

Idem

(2) After examination of a return, the Provincial Minister shall send a notice of assessment to the person by whom the return was filed.

Idem

(3) Liability for tax under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. R.S.O. 1970, c. 217, s. 9 (1-3).

Idem

(4) The Provincial Minister may at any time assess tax, interest or penalties under this Act or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for a taxation year and may,

(a) at any time, if the taxpayer or person filing the return,

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the

return or in supplying any information under this Act, or

- (ii) has filed with the Treasurer a waiver in prescribed form within four years from the day of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year; and
- (b) within four years from the day referred to in subclause (a) (ii) in any other case,

reassess or make additional assessments or assess tax, interest or penalties as the circumstances require. 1971 (2nd Sess.), c. 1, s. 9 (1).

(5) Notwithstanding subsection (4), there shall not be included in computing the income of a taxpayer, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties that is made after the expiration of four years from the day referred to in subclause (4) (a) (ii), any amount that was not included in computing his income for the purposes of an assessment of tax made before the expiration of four years from that day, and, Idem

- (a) in respect of which the taxpayer establishes that the failure so to include it did not result from any misrepresentation that is attributable to neglect, carelessness or wilful default or from any fraud in filing a return of his income or in supplying any information under this Act; or
- (b) that the taxpayer establishes cannot reasonably be regarded as relating to a matter specified in a waiver filed by the taxpayer with the Provincial Minister, in the form and within the time referred to in subsection (4), with respect to a taxation year to which the reassessment, additional assessment or assessment of tax, interest or penalties, as the case may be, relates. 1972, c. 100, s. 5.

(6) Where a collection agreement is entered into, notwithstanding that more than four years have elapsed since the day referred to in subclause (4) (a) (ii), the Minister shall reassess or make additional assessments, or assess tax, interest or penalties, as the circumstances require, where the tax payable under Part I of the Federal Act is reassessed. R.S.O. 1970, c. 217, s. 9 (5). Idem

Idem

(7) Where a taxpayer has filed the return required by section 8 for a taxation year and, within one year from the day on or before which he was required by section 8 to file the return for that year, has filed an amended return for the year claiming a deduction from income under section 111 of the Federal Act in respect of non-capital losses, net capital losses or restricted farm losses sustained in the taxation year immediately following that year, the Provincial Minister shall reassess the taxpayer's tax for the year. 1971 (2nd. Sess.), c. 1, s. 9 (2).

Idem

(8) The Provincial Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Act.

Idem

(9) An assessment shall, subject to being varied or vacated on an objection or appeal under this Act and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. R.S.O. 1970, c. 217, s. 9 (7-8).

## PAYMENT OF TAX

Deductions  
at source**11.—**(1) Every person paying,

- (a) salary or wages or other remuneration to an officer or employee;
- (b) a superannuation or pension benefit;
- (c) a retiring allowance;
- (d) an amount upon or after the death of an officer or employee, in recognition of his services, to his legal representative or widow or to any other person whatsoever;
- (e) an amount as a benefit under the *Unemployment Insurance Act*, 1971 (Canada);
- (f) an amount as a benefit under a supplementary unemployment benefit plan;
- (g) an annuity payment;
- (h) fees, commissions or other amounts for services;

1970-71-72,  
c. 229 (Can.)

- (i) a payment under a deferred profit-sharing plan or a plan referred to in section 147 of the Federal Act as a revoked plan;
- (j) an adult training allowance under the *Adult Occupational Training Act* (Canada); R.S.C. 1970, c. A-2
- (k) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146 (12) of the Federal Act as an amended plan;
- (l) an amount as, on account of, or in lieu of payment of, or in satisfaction of proceeds of the surrender, cancellation or redemption of an income averaging annuity contract; or
- (m) a payment out of or under a registered retirement income fund,

at any time in a taxation year shall deduct or withhold therefrom such amount as is prescribed and shall, at such time as is prescribed, remit that amount to the Treasurer on account of the payee's tax for the year under this Act. R.S.O. 1970, c. 217, s. 10 (1); 1971 (2nd Sess.), c. 1, s. 10; 1977, c. 6, s. 4; 1978, c. 76, s. 3.

(2) Where amounts have been deducted or withheld under this section from the remuneration received by an individual in a taxation year, if the total of such amounts is equal to or greater than three-quarters of the tax payable for the year, he shall, on or before the 30th day of April in the next year, pay to the Treasurer the remainder of his tax for the year as estimated under section 9. Payment of remainder

(3) Where an amount has been deducted or withheld under subsection (1), it shall, for all the purposes of this Act, be deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid. R.S.O. 1970, c. 217, s. 10 (2-3). Effect of deduction

**12.—**(1) Every individual whose chief source of income is farming or fishing shall pay to the Treasurer, Farmers and fishermen

- (a) on or before the 31st day of December in each taxation year, two-thirds of,
  - (i) the amount estimated by him under section 9 to be his tax payable under this Act for the year, or
  - (ii) his tax payable under this Act for the immediately preceding year; and

- (b) on or before the 30th day of April in the next year the remainder of the tax as estimated under section 9. R.S.O. 1970, c. 217, s. 11 (1); 1975, c. 16, s. 4.

Idem, where  
collection  
agreement

(2) Where a collection agreement is entered into, an individual to whom subsection (1) applies shall pay an amount under clause (a) thereof computed in respect of the same year as the amount is computed that he is liable to pay under paragraph 155 (a) of the Federal Act. R.S.O. 1970, c. 217, s. 11 (2); 1971 (2nd Sess.), c. 1, s. 11.

All others

**13.**—(1) Every individual, other than one to whom subsection 11 (2) or section 12 applies, shall pay to the Treasurer,

- (a) on or before the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December, respectively, in each taxation year, an amount equal to one-quarter of,

(i) the amount estimated by him under section 9 to be his tax payable under this Act for the year, or

(ii) his tax payable under this Act for the immediately preceding year; and

- (b) on or before the 30th day of April in the next year, the remainder of the tax as estimated under section 9. R.S.O. 1970, c. 217, s. 12 (1); 1975, c. 16, s. 5 (1).

Idem, where  
collection  
agreement

(2) Where a collection agreement is entered into, an individual to whom subsection (1) applies shall pay an amount under clause (a) thereof computed in respect of the same year as the amount is computed that he is liable to pay under paragraph 156 (a) of the Federal Act. R.S.O. 1970, c. 217, s. 12 (2); 1971 (2nd Sess.), c. 1, s. 12.

Interpre-  
tation

(3) For the purposes of section 12 and this section, "tax payable under the Federal Act" for a taxation year has the meaning given that expression in clause 3 (6) (a), whether such taxation year is before or after the coming into force of this Act. R.S.O. 1970, c. 217, s. 12 (3).

When no  
instalment  
required

(4) Where no federal instalments are required pursuant to section 156.1 of the Federal Act, the requirements for payment by instalments under sections 12 and 13 of this Act are not applicable, and the individual shall on or before the 30th day of April next following the taxation year pay to

the Treasurer his estimated tax payable for that taxation year. 1975, c. 16, s. 5 (2).

**14.**—(1) The taxpayer shall, within thirty days from the day of mailing of the notice of assessment, pay to the Treasurer any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding. <sup>Payment of remainder</sup>

(2) Where, in the opinion of the Provincial Minister, a taxpayer is attempting to avoid payment of taxes, the Provincial Minister may direct that all taxes, penalties and interest be paid forthwith upon assessment. <sup>Payment forthwith</sup> R.S.O. 1970, c. 217, s. 13.

**15.** Sections 159 and 160, subsection 104 (2), paragraph 104 (23) (e) and subsection 70 (2) of the Federal Act apply with necessary modifications in respect of the payment of tax under this Act for a taxation year by a taxpayer subject to tax under this Act to whom such provisions apply in respect of tax payable under the Federal Act for the same taxation year. <sup>Application of certain provisions</sup> 1971 (2nd Sess.), c. 1, s. 13.

#### INTEREST

**16.**—(1) Where the amount paid on account of tax payable by a taxpayer under this Act for a taxation year before the expiration of the time allowed for filing the return for that year is less than the amount of tax payable for the year under this Act, the person liable to pay the tax shall pay interest at the rate per annum prescribed for the purposes of subsection 161 (1) of the Federal Act on the difference between those two amounts from the expiration of the time for filing the return to the day of payment. <sup>General</sup>

(2) In addition to the interest payable under subsection (1), where a taxpayer, being required by this Act to pay a part or instalment of tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at the rate per annum prescribed for the purposes of subsection 161 (1) of the Federal Act from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he is liable to pay interest thereon under subsection (1), whichever is earlier. <sup>Interest on instalments</sup> 1971 (2nd Sess.), c. 1, s. 14 (1).

## Limitation

(3) For the purposes of subsection (2), where a taxpayer is required to pay a part or instalment of tax for a taxation year as estimated by him with reference to a preceding year or with reference to the taxation year, he shall be deemed to have been liable to pay a part or instalment computed by reference to his tax for,

(a) the preceding year; or

(b) the taxation year,

whichever is the lesser. R.S.O. 1970, c. 217, s. 15 (3).

Instalments,  
where  
collection  
agreement

(4) Notwithstanding subsection (3), where a collection agreement is entered into, for the purposes of subsection (2) the taxpayer shall be deemed to have been liable to pay a part or instalment computed by reference to his tax for the same year as the year by reference to which the part or instalment that he is deemed by subsection 161 (4) of the Federal Act to be liable to pay was computed. R.S.O. 1970, c. 217, s. 15 (4); 1971 (2nd Sess.), c. 1, s. 14 (2).

Participa-  
tion  
certificates

(5) Notwithstanding any other provision in this section no interest is payable in respect of the amount by which the tax payable by a person is increased by a payment made by the Canadian Wheat Board on a participation certificate previously issued to him until thirty days after the payment is made.

Where  
income  
in other  
countries  
barred from  
Canada

(6) Where the income of a taxpayer for a taxation year, or part thereof, is from sources in another country and the taxpayer by reason of monetary or exchange restrictions imposed by the law of that country is unable to transfer it to Canada, the Provincial Minister may, if he is satisfied that payment as required by this Act of the whole of the additional tax under this Act for the year reasonably attributable to income from sources in that country would impose extreme hardship on the taxpayer, postpone the time for payment of the whole or a part of that additional tax for a period to be determined by the Provincial Minister, but no such postponement may be granted if any of the income for the year from sources in that country has been,

(a) transferred to Canada;

(b) used by the taxpayer for any purpose whatsoever, other than payment of income tax to the government of that other country on income from sources therein; or

(c) disposed of by him,

and no interest is payable under this section in respect of that additional tax, or part thereof, during the period of postponement. R.S.O. 1970, c. 217, s. 15 (5, 6).

(7) Where a taxpayer is entitled to deduct under section 111 of the Federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the Federal Act in respect of that loss. R.S.O. 1970, c. 217, s. 15 (7); 1971 (2nd Sess.), c. 1, s. 14 (3). Effect of  
carry back  
of loss

#### PENALTIES

**17.—**(1) Every person who has failed to make a return as and when required by subsection 8 (1) is liable to a penalty of, Failure  
to make  
return

(a) an amount equal to 5 per cent of the tax that was unpaid when the return was required to be filed, if the tax payable under this Act that was unpaid at that time was less \$2,000; and

(b) \$100, if at the time the return was required to be filed tax payable under this Act equal to \$2,000 or more was unpaid.

(2) Every person who has failed to file a return as required by subsection 8 (3) is liable to a penalty of \$10 for each day of default but not more than \$50 in all. Idem

(3) Every person who has failed to complete the information on a prescribed form as required by or pursuant to section 8 is, unless the Provincial Minister has waived it, liable to a penalty, Failure to  
complete  
information

(a) of 1 per cent of the tax payable under this Act but, whether he is taxable or not, not less than \$25 or more than \$100; or

- (b) of such lesser amount as the Provincial Minister has fixed in respect of the specific failure. R.S.O. 1970, c. 217, s. 16 (1-3).

Idem, where  
collection  
agreement

(4) Where a collection agreement is entered into, the Minister may refrain from levying or may reduce a penalty provided in this section, if the person who is liable to such penalty is required to pay a penalty under section 162 of the Federal Act. R.S.O. 1970, c. 217, s. 16 (4); 1971 (2nd Sess.), c. 1, s. 15.

Statements  
or omissions  
in return

**18.**—(1) Every person who, knowingly or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this section referred to as a “false statement”) in a return, certificate, statement or answer (in this section referred to as a “return”) filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable by him under this Act if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by him under this Act had his tax payable for the year been assessed on the basis of the information provided in his return for the year.

Interpre-  
tation

(2) For the purposes of subsection (1), the taxable income reported by a person in his return for a taxation year shall be deemed not to be less than nil and the “understatement of income for a year” of a person has the meaning assigned to that expression in subsection 163 (2.1) of the Federal Act. 1978, c. 11, s. 3.

Penalty  
for failure  
to file  
returns

(3) Every person who wilfully attempts to evade payment of the tax payable by him by wilfully failing to file a return of income as and when required by subsection 8 (1) is liable to a penalty of 50 per cent of the amount of tax sought to be evaded.

Onus on  
Provincial  
Minister

(4) Where in any appeal under this Act a penalty assessed by the Provincial Minister under this section is in issue, the onus of establishing the facts justifying the assessment of

the penalty rests upon the Provincial Minister. 1971 (2nd Sess.), c. 1, s. 16.

#### REFUND OF OVERPAYMENT

**19.**—(1) If the return required to be filed by a taxpayer <sup>Refunds</sup> for a taxation year has been made within four years from the end of the year, the Provincial Minister,

- (a) may, upon mailing the notice of assessment for the year, refund, without application therefor, any overpayment made on account of the tax; and
- (b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within four years from the end of the year.

(2) Instead of making a refund that might otherwise be <sup>Application to other taxes</sup> made under this section, the Provincial Minister may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action. R.S.O. 1970, c. 217, s. 18 (1, 2).

(3) Where an amount in respect of an overpayment is <sup>Interest on over-payments</sup> refunded or applied under this section on other liability, interest at the rate per annum prescribed for the purposes of subsection 164 (3) of the Federal Act shall be paid or applied thereon for the period commencing with the latest of,

- (a) the day when the overpayment arose;
- (b) the day on or before which the return in respect of which the tax was paid was required to be filed; or
- (c) the day when the return was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection. R.S.O. 1970, c. 217, s. 18 (3); 1971 (2nd Sess.), c. 1, s. 17 (1).

(4) Where, by a decision of the Provincial Minister under <sup>Idem. after court judgment</sup> section 20 or by a decision of the Supreme Court of Ontario or the Supreme Court of Canada, it is finally determined that the tax payable by a taxpayer for a taxation year under this Act is less than the amount assessed by the assessment under section 10 to which the objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment for the tax-

ation year, the interest payable under subsection (3) on that overpayment shall be computed at the rate per annum prescribed for the purposes of subsection 161 (1) of the Federal Act instead of that prescribed for the purposes of subsection 164 (3) of the Federal Act. 1971 (2nd Sess.), c. 1, s. 17 (2).

Idem

(5) Where a collection agreement is entered into and, by virtue of a decision referred to in subsection 164 (4) of the Federal Act, that subsection applies to any overpayment made under that Act in respect of tax payable by a taxpayer for a taxation year, subsection (4) of this section applies to any overpayment made under this Act in respect of the same year that arose by virtue of the same decision. R.S.O. 1970, c. 217, s. 18 (5); 1971 (2nd Sess.), c. 1, s. 17 (3).

Interpre-  
tation

(6) For the purpose of this section, "overpayment" means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable. R.S.O. 1970, c. 217, s. 18 (6).

Effect of  
carry back  
of loss

(7) Where a taxpayer is entitled to deduct under section 111 of the Federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), and the amount of the tax payable for the taxation year is relevant in determining an overpayment for the purpose of computing interest under subsection (3) for any portion of a period ending on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the Federal Act in respect of that loss. R.S.O. 1970, c. 217, s. 18 (7); 1971 (2nd Sess.), c. 1, s. 17 (4).

Where  
disposition  
by legal  
representa-  
tive of  
deceased  
taxpayer

(8) Where in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative has, within the twelve month period immediately following the death of the taxpayer, disposed of certain property of the estate described in paragraph 164 (6) (a) or (b) of the Federal Act, subsection 164 (6) of the Federal Act is applicable with necessary modifications. 1971 (2nd Sess.), c. 1, s. 17 (5).

#### OBJECTIONS TO ASSESSMENTS

Notice of  
objection

**20.**—(1) A taxpayer who objects to an assessment under this Act may, within ninety days from the day of mailing of the notice of assessment, serve on the Provincial Minister

a notice of objection in duplicate in prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served Service of notice by being sent by registered mail addressed to the Provincial Minister. R.S.O. 1970, c. 217, s. 19 (1, 2).

(3) Upon receipt of a notice of objection, the Provincial Minister shall, Reconsideration

(a) where the taxpayer indicates in the notice of objection that he wishes to appeal immediately to the court and that he waives reconsideration of the assessment and the Provincial Minister consents, file a copy of the notice of objection with the Registrar of the Supreme Court or the local registrar of the court for the county or district in which the taxpayer resides; or

(b) with all due despatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess,

and he shall thereupon notify the taxpayer of his action by registered mail.

(4) Where the Provincial Minister files a copy of a notice of objection pursuant to clause (3) (a), the Provincial Minister shall be deemed, for the purpose of this section, to have confirmed the assessment to which the notice relates and the taxpayer who served the notice shall be deemed to have thereupon instituted an appeal in accordance with this section. 1971 (2nd Sess.), c. 1, s. 18 (1). Deemed confirmation and appeal

(5) A reassessment made by the Provincial Minister pursuant to subsection (3) is not invalid by reason only of not having been made within four years from the day of mailing of a notice of an original assessment or of a notification described in subsection 10 (4). Idem

(6) The Provincial Minister may accept a notice of objection under this section notwithstanding that it was not served in duplicate or in the manner required by subsection (2). R.S.O. 1970, c. 217, s. 19 (4, 5). Acceptance of notice

(7) Where a taxpayer has served a notice of objection to an assessment in accordance with this section and thereafter the Provincial Minister reassesses the taxpayer's tax for the taxation year in respect of which the notice of objection was served or issues an additional assessment in respect thereof, and notifies the taxpayer of his action by registered mail, the taxpayer may, without serving a notice of objection to the reassessment or the additional assessment, No notice of objection required in respect of reassessment or additional assessment

- (a) appeal therefrom to the court in accordance with section 21; or
- (b) if an appeal to the court has been instituted with respect to the assessment, amend such appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms, if any, as the court directs. 1971 (2nd Sess.), c. 1, s. 18 (2).

DIVISION E—APPEALS TO THE SUPREME COURT OF  
ONTARIO

Right of  
appeal of  
taxpayer

**21.**—(1) A taxpayer who has served a notice of objection to an assessment under subsection 20 (1) may appeal to the Supreme Court to have the assessment vacated or varied after either,

- (a) the Provincial Minister has confirmed the assessment or reassessed; or
- (b) 180 days have elapsed after service of the notice of objection and the Provincial Minister has not notified the taxpayer that he has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of ninety days from the day notice has been mailed to the taxpayer in accordance with subsection 20 (3) that the Provincial Minister has confirmed the assessment or reassessed.

Basis for  
appeal

(2) An appeal from an assessment under this Act may be taken in respect of any question relating to the determination of,

- (a) his residence for the purposes of this Act;
- (b) his income earned in the taxation year in Ontario as defined in clause 3 (6) (b); or
- (c) the amount of tax payable for a taxation year based on the tax payable under the Federal Act for that year as defined in clause 3 (6) (a),

but no appeal from an assessment lies in respect of the computation of the tax payable under the Federal Act as defined in clause 3 (6) (a).

(3) An appeal under this section shall be instituted by serving upon the Provincial Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or the local registrar of the court for the county or district in which the taxpayer appealing resides. <sup>Notice of appeal</sup>

(4) A notice of appeal shall be served upon the Provincial Minister by being sent by registered mail addressed to the Provincial Minister. <sup>Service of notice</sup>

(5) The taxpayer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons that he intends to submit in support of his appeal. <sup>Contents of notice</sup>

(6) The taxpayer appealing shall pay to the Registrar of the Supreme Court or the local registrar of the court, as the case may be, a fee of \$400, or such lesser amount as the Provincial Minister requires, upon the filing of the copy of the notice of appeal. R.S.O. 1970, c. 217, s. 20. <sup>Fee on appeal</sup>

**22.**—(1) The Provincial Minister shall, within sixty days from the day the notice of appeal is received or within such further time as a judge of the court may either before or after the expiration of that time allow, serve on the appellant and file in the court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on. <sup>Reply</sup>

(2) A judge of the court may, in his discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection 21 (5) and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out. <sup>Striking out or amending notice of appeal</sup>

(3) A judge of the court may, in his discretion, <sup>Idem</sup>

(a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply; or

(b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

(4) Where a notice of appeal is struck out for failure to comply with subsection 21 (5) and a new notice of <sup>Disposal of appeal where notice struck out</sup>

appeal is not filed as and when permitted by a judge of the court, a judge of the court may, in his discretion, dispose of the appeal by dismissing it.

Disposal  
of appeal  
where reply  
struck out

(5) Where a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by a judge of the court within the time ordered, a judge of the court may dispose of the appeal *ex parte* or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true. R.S.O. 1970, c. 217, s. 21.

Appeal  
deemed  
an action

**23.**—(1) Upon the filing of the material referred to in sections 21 and 22, the matter shall be deemed to be an action in the court and, unless the court otherwise orders, ready for hearing.

Pleading  
of other  
matters

(2) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the court directs.

Disposal  
of appeal

(3) The court may dispose of the appeal by,

- (a) dismissing it;
- (b) allowing it; or
- (c) allowing it and,

- (i) vacating the assessment,
- (ii) varying the assessment,
- (iii) restoring the assessment, or
- (iv) referring the assessment back to the Provincial Minister for reconsideration and re-assessment.

Order for  
payment

(4) The court may, in delivering judgment disposing of an appeal, order payment or repayment of tax, interest, penalties or costs by the taxpayer or the Provincial Minister. R.S.O. 1970, c. 217, s. 22.

Proceedings  
*in camera*

**24.** Proceedings under this Division shall be held *in camera* upon request made to the court by the taxpayer. R.S.O. 1970, c. 217, s. 23.

S.C.O.  
practice  
to govern

**25.** The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter deemed to be an action under section 23, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order

given or made in an action commenced in the court. R.S.O. 1970, c. 217, s. 24.

**26.** An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act or of the Federal Act where such provision in that Act applies in respect of any action under this Act. R.S.O. 1970, c. 217, s. 25. Irregularities

### PART III—ADMINISTRATION AND ENFORCEMENT

#### ADMINISTRATION

**27.—**(1) The Provincial Minister shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act and the Deputy Minister of Revenue may exercise all the powers and perform the duties of the Provincial Minister under this Act. Administration of Act

(2) The Provincial Minister may at any time extend the time for making a return under this Act. Extensions of time for returns

(3) The Provincial Minister may, if he considers it advisable in a particular case, accept security for payment of taxes by way of mortgage or other charge of any kind whatsoever on property of the taxpayer or any other person or by way of guarantee from other persons. R.S.O. 1970, c. 217, s. 26 (1-3). Security for taxes

(4) Any person employed in connection with the administration or enforcement of this Act may, in the course of his employment, Administration of oaths

(a) if he is designated by the Provincial Minister for the purpose; or

(b) where a collection agreement is entered into, if he is a person designated by the Minister under the Federal Act for the purposes of subsection 220 (5) of that Act,

administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act or the regulations and every person so designated has for such purposes all the powers of a commissioner for taking affidavits. R.S.O. 1970, c. 217, s. 26 (4); 1971 (2nd Sess.), c. 1. s. 19.

Remission  
of provincial  
portion of  
federal  
tax remitted  
R.S.C. 1970,  
c. F-10

**28.** Where, pursuant to the *Financial Administration Act* (Canada), remission is granted of any tax, interest or penalty paid under the Federal Act by or for an individual, and where any tax, interest or penalty was paid by that individual under this Act in respect of the same circumstances that gave rise to the remission granted under the *Financial Administration Act* (Canada), the Provincial Minister may, if he considers that the circumstances are sufficiently similar and that a remission of any money paid under this Act should be granted either in the public interest or for the relief of hardship, grant remission of all or any part of any tax, interest or penalty paid under this Act in such circumstances, and may authorize the repayment to the person entitled thereto of any amount remitted by him in accordance with this section. 1978, c. 76, s. 4.

Regulations

**29.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;
- (b) providing in any case of doubt the circumstances in which, and extent to which, the Federal Regulations apply;
- (c) providing for the calculation of the “federal share of the costs of the 1978 Economic Stimulation Program” for the purposes of section 51;
- (d) providing for the calculation of the adjusting payment under subsection 51 (4); and
- (e) generally to carry out the purposes of this Act.

R.S.O. 1970, c. 217, s. 27 (1); 1978, c. 20, s. 2.

Application  
of Federal  
Regulations

(2) Except to the extent that they are inconsistent with any regulations made under subsection (1) or are expressed by any regulation made under subsection (1) to be inapplicable, the Federal Regulations made under section 221 of the Federal Act apply with necessary modifications for the purposes of this Act with respect to all matters enumerated in that section. R.S.O. 1970, c. 217, s. 27 (2); 1971 (2nd Sess.), c. 1, s. 20.

Publication  
of  
Regulations

(3) No regulation made under this Act or under the Federal Act where it is applicable with necessary modifications has effect for the purposes of this Act until it has been published in *The Ontario Gazette* or the *Canada Gazette*, as the case may be, but,

when so published, a regulation is, if it so provides, effective with reference to a period before it was published. R.S.O. 1970, c. 217, s. 27 (3).

#### ENFORCEMENT

**30.** All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty in right of Ontario and are recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act. R.S.O. 1970, c. 217, s. 28. Taxes, etc.,  
are debts

**31.**—(1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may be certified by the Provincial Minister, Certificate  
of in-  
debtedness

(a) where there has been a direction by the Provincial Minister under subsection 14 (2), forthwith after such direction; and

(b) otherwise, upon the expiration of thirty days after the default.

(2) On production to the Supreme Court, a certificate made under this section shall be registered in the court and, when registered, has the same force and effect and all proceedings may be taken thereon as if the certificate were a judgment obtained in the court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act. Registration  
of certificate

(3) All reasonable costs and charges attendant upon the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section. R.S.O. 1970, c. 217, s. 29. Recovery of  
costs, etc.

**32.** The Provincial Minister may issue a warrant, directed to the sheriff of any county or district in which any property of the taxpayer is located or situate, for the amount of the tax, interest and penalty or any of them owing by the taxpayer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and bonding of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court. R.S.O. 1970, c. 217, s. 30. Warrant for  
collection  
of in-  
debtedness

**33.**—(1) Where the provincial Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter or by a Requisition  
of moneys  
owed to  
taxpayer

letter served personally, require him to pay the moneys otherwise payable to that person in whole or in part to the Treasurer on account of the liability under this Act.

Effect of receipt

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Continuing effect of requisition

(3) Where the Provincial Minister has, under this section, required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as is stipulated by the Provincial Minister in the registered letter.

Penalty for failure to comply

(4) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with a requirement under this section is liable to pay to Her Majesty in right of Ontario an amount equal to the liability discharged or the amount which he was required under this section to pay to the Treasurer, whichever is the lesser.

Service on certain firms

(5) Where the person who is or is about to become indebted or liable carries on business under a name or style other than his own name, the registered or other letter under subsection (1) may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

Service on partnership

(6) Where the persons who are or are about to become indebted or liable carry on business in partnership, the registered or other letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. R.S.O. 1970, c. 217, s. 31.

Seizure of goods on default in payment

**34.**—(1) Where a person has failed to make a payment as required by this Act, the Provincial Minister, on giving ten days notice by registered mail addressed to his last known place of residence, may, whether or not there is an objection to or appeal in respect of the assessment not disposed of, issue a certificate of the failure and direct that the goods

and chattels of the person in default that are located in Ontario be seized.

(2) Property seized under this section shall be kept for ten days at the cost and charges of the owner and, if he does not pay the amount due together with the costs and charges within the ten days, the property seized shall be sold by public auction. Sale of goods seized

(3) Except in the case of perishable goods, notice of the sale setting forth the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation. Notice of sale

(4) Any surplus resulting from the sale after deduction of the amount owing and all costs and charges shall be paid or returned to the owner of the property seized. Disposal of surplus

(5) Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of the Supreme Court are exempt from seizure under this section. R.S.O. 1970, c. 217, s. 32. Exemptions from seizure

**35.**—(1) Where the Provincial Minister suspects that a taxpayer is about to leave Ontario or Canada, he may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived and the same shall be paid forthwith notwithstanding any other provision of this Act. Demand for payment

(2) Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Provincial Minister may direct that the goods and chattels of the taxpayer that are located in Ontario be seized and subsections 34 (2) to (5) are thereupon applicable with necessary modifications. R.S.O. 1970, c. 217, s. 33. Seizure of goods for failure to comply with demand

**36.**—(1) No action lies against any person for withholding or deducting any sum of money in compliance or intended compliance with this Act. Certain actions barred

(2) Every person whose employer is required to deduct or withhold any amount from his remuneration under section 11 shall, from time to time as prescribed, file a return with his employer in prescribed form. Returns by employees

Effect of  
failure to  
file return

(3) Every person failing to file a form as required by subsection (2) is liable to have the deduction or withholding from his salary or wages under section 11 made as though he were an unmarried person without dependants.

Trust  
created

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty in right of Ontario.

Deductions  
to be kept  
separate

(5) All amounts deducted or withheld by a person under this Act shall be kept separate and apart from his own moneys and, where a collection agreement is entered into, such amounts shall be kept with amounts deducted or withheld by that person under the Federal Act. R.S.O. 1970, c. 217, s. 34 (1-5).

Penalty for  
failure  
to deduct

(6) Any person who has failed to deduct or withhold any amount as required by this Act or a regulation is liable to pay to Her Majesty in right of Ontario,

(a) if the amount should have been deducted or withheld under section 11 from an amount that has been paid to a person resident in Ontario, 10 per cent of the amount that should have been deducted or withheld; and

(b) in any other case, the whole amount that should have been deducted or withheld,

together with interest thereon at the rate per annum prescribed for the purposes of subsection 227 (8) of the Federal Act. R.S.O. 1970, c. 217, s. 34 (6); 1971 (2nd Sess.), c. 1, s. 21 (1).

Penalty  
for failure  
to remit

(7) Every person who has failed to remit or pay an amount deducted or withheld as required by this Act or a regulation is liable to a penalty of 10 per cent of that amount or \$10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the rate per annum prescribed for purposes of subsection 227 (8) of the Federal Act, but, where a collection agreement is entered into, the Minister may refrain from levying or reduce the penalty if the person who is liable therefor is liable to pay a penalty under subsection 227 (9) of the Federal Act by reason of the failure to pay an amount described in paragraph (a) of that subsection. 1971 (2nd Sess.), c. 1, s. 21 (2).

Assessment  
for amount  
deducted

(8) The Provincial Minister may assess any person for any amount that has been deducted or withheld by

that person under this Act or a regulation or that is payable by that person under this section and, upon his sending a notice of assessment to that person, Divisions I and J of Part I of the Federal Act are applicable with necessary modifications. 1972, c. 100, s. 6.

(9) The provisions of this Act that require a person to deduct or withhold an amount in respect of taxes from amounts payable to a taxpayer are applicable to Her Majesty in right of Ontario. Deduction provisions applicable to Crown

(10) Where this Act requires an amount to be deducted or withheld, an agreement by the person on whom that obligation is imposed not to deduct or withhold is void. Agreements not to deduct void

(11) The receipt of the Treasurer for an amount withheld or deducted by any person as required by or under this Act is a good and sufficient discharge of the liability of any debtor to his creditor with respect thereto to the extent of the amount referred to in the receipt. R.S.O. 1970, c. 217, s. 34 (9-11). Effect of receipt

#### GENERAL

**37.**—(1) Every person carrying on business in Ontario and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at his place of business or residence in Ontario or at such other place as is designated by the Provincial Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined. Records to be kept

(2) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Provincial Minister may require him to keep such records and books of account as he specifies and that person shall thereafter keep records and books of account as so required. Idem

(3) Every person required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Provincial Minister, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. R.S.O. 1970, c. 217, s. 35. Retention of records

**38.**—(1) Any person thereunto authorized by the Provincial Minister for any purpose related to the administration or Right of entry, etc.

enforcement of this Act may, at all reasonable times, enter into any premises or place where any business is carried on in Ontario or any property is kept or anything is done in connection with any business or any books or records are, or should be, kept pursuant to this Act, and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act;
- (b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act;
- (c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him; and
- (d) if, during the course of an audit or examination, it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the documents, books, records, papers or things that may be required as evidence as to the violation of any provision of this Act or a regulation. R.S.O. 1970, c. 217, s. 36 (1); 1971 (2nd Sess.), c. 1, s. 22.

Requisition  
of  
information

(2) The Provincial Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person,

- (a) any information or additional information, including a return of income or a supplementary return; or
- (b) production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents,

within such reasonable time as is stipulated therein.

(3) The Provincial Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such peace officers as he calls on to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place in Ontario for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings. <sup>Search warrants</sup>

(4) The Provincial Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not he is an officer of the Ministry of Revenue, to make such inquiry as he deems necessary with reference to anything relating to the administration or enforcement of this Act. <sup>Inquiries</sup>

(5) Where any book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced or any officer of the Ministry of Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Provincial Minister or a person thereunto authorized by the Provincial Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way. <sup>Certified copies of documents</sup>

(6) No person shall hinder or molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by or pursuant to this section to do. <sup>Hindering</sup>

(7) Every person thereunto authorized by the Provincial Minister may administer or receive an oath, affirmation or statutory declaration required to be given by or pursuant to this section. <sup>Administration of oaths</sup>

(8) For the purpose of an inquiry authorized under subsection (4), the person authorized to make the inquiry has all the powers and authority of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act. R.S.O. 1970, c. 217, s. 36 (2-8); 1971, c. 49, s. 18; 1972, c. 1, s. 1. <sup>Powers on inquiry</sup>  
<sup>R.S.O. 1980, c. 411</sup>

Application  
of s. 232  
of Federal  
Act

**39.**—(1) Section 232 of the Federal Act applies with necessary modifications for the purposes of this Act where, in the same or similar circumstances, that section is or would be applicable for the purposes of the Federal Act. R.S.O. 1970, c. 217, s. 37 (1); 1971 (2nd Sess.), c. 1, s. 23 (1).

Reference to  
Deputy A.G.

(2) For the purposes of this section, a reference to the Deputy Attorney General of Ontario shall be substituted for any reference to the Deputy Attorney General of Canada in section 232 of the Federal Act, but, where a collection agreement is entered into, section 232 of the Federal Act shall be read without such reference being substituted. R.S.O. 1970, c. 217, s. 37 (2); 1971 (2nd Sess.), c. 1, s. 23 (2); 1972, c. 1, s. 9 (7).

Filing of  
information  
on demand

**40.** Whether or not he has filed an information return as required by a regulation made under paragraph 221 (1) (d) of the Federal Act as it applies by virtue of subsection 29 (2) of this Act, every person shall, on demand by registered letter from the Provincial Minister, file within such reasonable time as is stipulated in the registered letter with the Provincial Minister such prescribed information return as is designated in the letter. R.S.O. 1970, c. 217, s. 38; 1971 (2nd Sess.), c. 1, s. 24.

Penalty for  
failure to  
comply with  
regulations

**41.**—(1) Every person who fails to comply with a regulation made under paragraph 221 (1) (d) or (e) of the Federal Act, as it applies by virtue of subsection 29 (2) of this Act, is liable in respect of each failure to so comply to a penalty of \$10 a day for each day of default but not more than \$2,500 in all. R.S.O. 1970, c. 217, s. 39 (1); 1971 (2nd Sess.), c. 1, s. 25.

Idem

(2) Every person who fails to comply with a regulation made under section 29 or incorporated by reference by virtue of subsection (2) thereof is liable to a penalty of \$10 a day for each day of default but not more than \$2,500 in all. R.S.O. 1970, c. 217, s. 39 (2).

Signature of  
corporations

**42.** A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the president, secretary or treasurer of the corporation or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation. R.S.O. 1970, c. 217, s. 40.

#### OFFENCES

Offence,  
failure to  
file return

**43.**—(1) Every person who fails to file a return as and when required by or under this Act or a regulation is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to a fine of not less than \$25 for each day of default.

(2) Every person who fails to comply with or contravenes <sup>Offences, certain</sup> subsection 11 (1), subsection 36 (5), section 37 or section 38 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to,

- (a) a fine of not less than \$200 and not more than \$10,000;  
or
- (b) both the fine described in clause (a) and imprisonment for a term of not more than six months.

(3) Where a person has been convicted under this section of <sup>Saving</sup> failing to comply with a provision of this Act or a regulation, he is not liable to pay a penalty imposed under section 17, 36 or 41 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information giving rise to the conviction was laid. R.S.O. 1970, c. 217, s. 41.

**44.** Every person who has,

<sup>Offences, certain</sup>

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer;
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular in records or books of account of a taxpayer;
- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit an offence described by clauses (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to,

- (f) a fine of not less than 25 per cent and not more than double the amount of the tax that was sought to be evaded; or

- (g) both the fine described in clause (f) and imprisonment for a term of not more than two years. R.S.O. 1970, c. 217, s. 42; 1971 (2nd Sess.), c. 1, s. 26.

Ministerial  
discretion

**45.** Where a collection agreement is entered into and proceedings under section 238 or 239 of the Federal Act are taken against any person, the Minister may take or refrain from taking any action against such person contemplated by section 43 or 44 of this Act, as the case may be. R.S.O. 1970, c. 217, s. 43; 1971 (2nd Sess.), c. 1, s. 27.

Offence,  
secrecy

**46.**—(1) Every person who, while employed in the administration of this Act, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act or has allowed any such person to inspect or have access to any written statement furnished under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$200.

Where  
subs. (1) not  
applicable

(2) Subsection (1) does not apply to the communication of information between,

(a) the Minister and the Provincial Minister; or

(b) the Minister, acting on behalf of Ontario, and the Provincial Minister, the Provincial Secretary-Treasurer, or the Minister of Finance of the government of,

(i) an agreeing province, or

(ii) a non-agreeing province to which an adjusting payment may be made under subsection 55 (2).  
R.S.O. 1970, c. 217, s. 44.

Liability of  
corporation  
officers

**47.** Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. R.S.O. 1970, c. 217, s. 45.

No decrease  
in penalties

**48.** Notwithstanding any other statute or law in force at the commencement of this Act, a court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act and a court has no power to suspend sentence. R.S.O. 1970, c. 217, s. 46.

## PROCEDURE AND EVIDENCE

**49.**—(1) An information under this Act may be laid by any <sup>Information</sup> officer of the Ministry of Revenue, by a member of the Ontario Provincial Police Force, or by any person thereunto authorized by the Provincial Minister, and, where an information purports to have been laid under this Act, it shall be deemed to have been laid by a person thereunto authorized by the Provincial Minister and shall not be called in question for lack of authority of the informant except by the Provincial Minister or by some person acting for him or Her Majesty.

(2) An information in respect of an offence under this Act <sup>Two or more offences</sup> may be for one or more offences, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) A proceeding under the *Provincial Offences Act* in respect of an offence under this Act may be commenced on or before a day <sup>Limitation of prosecutions</sup> five years from the time when the matter of the proceeding arose or within one year from the day on which evidence, sufficient in the opinion of the Provincial Minister to justify a prosecution for the offence, came to his knowledge, and the Provincial Minister's certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof. R.S.O. 1970, c. 217, s. 47 (1-3); 1972, c. 1, s. 1.

(4) Where, by this Act or a regulation, provision is made <sup>Proof of service by mail</sup> for sending by mail a request for information, notice or demand, an affidavit of an officer of the Ministry of Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof, and a true copy of the request, notice or demand, shall be received as *prima facie* evidence of the sending and of the request, notice or demand. R.S.O. 1970, c. 217, s. 47 (4); 1972, c. 1, s. 1; 1978, c. 76, s. 5.

(5) Where, by this Act or a regulation, a person is <sup>Proof of failure to comply</sup> required to make a return, statement, answer or certificate, an affidavit of an officer of the Ministry of Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that

the return, statement, answer or certificate, as the case may be, has been made by such person, shall be received as *prima facie* evidence that in such case that person did not make the return, statement, answer or certificate, as the case may be.

Proof of  
time of  
compliance

(6) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Ministry of Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, shall be received as *prima facie* evidence that it was filed or made on that day and not prior thereto.

Proof of  
documents

(7) An affidavit of an officer of the Ministry of Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that the document annexed thereto is a document or true copy of a document made by or on behalf of the Provincial Minister or some person exercising the powers of the Provincial Minister or by or on behalf of a taxpayer, shall be received as *prima facie* evidence of the nature and contents of the document and is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Proof of  
no appeal

(8) An affidavit of an officer of the Ministry of Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Ministry and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as *prima facie* evidence of the statement contained therein.

Presumption

(9) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Ministry of Revenue, it is not necessary to prove his signature or that he is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit is sworn.

(10) Judicial notice shall be taken of,

Judicial  
notice

(a) all orders or regulations made under this Act; and

(b) a collection agreement entered into under this Act or any agreement for the collection by Canada of the taxes imposed under the income tax statute of an agreeing province,

without such orders, regulations or agreements being specially pleaded or proven.

(11) Every document purporting to be an order, direc-  
tion, demand, notice, certificate, requirement, decision, assess-  
ment, discharge of mortgage or other document purporting  
to have been executed under, or in the course of administra-  
tion or enforcement of, this Act over the name in writing  
of the Provincial Minister, his deputy, or an officer author-  
ized by regulation to exercise powers or perform duties of  
the Provincial Minister under this Act, shall be deemed to be  
a document signed, made and issued by the Provincial  
Minister, his deputy or the officer unless it has been called in  
question by the Provincial Minister or by some person  
acting for him or Her Majesty.

Proof of  
documents

(12) For the purposes of this Act, the day of mailing of  
any notice of assessment or notification described in subsection  
10 (4) shall, in the absence of any evidence to the contrary, be  
deemed to be the day appearing from such notice or notification to  
be the date thereof unless called in question by the Provincial  
Minister or by some person acting for him or Her Majesty.

Mailing  
date

(13) Where any notice of an assessment has been sent by  
the Provincial Minister as required by this Act, the assess-  
ment shall be deemed to have been made on the day of  
mailing of the notice of assessment.

Date when  
assessment  
made

(14) Every form purporting to be a form prescribed or  
authorized by the Provincial Minister shall be deemed to  
be a form prescribed by order of the Provincial Minister  
under this Act unless called in question by the Provincial  
Minister or by some person acting for him or Her Majesty.

Forms pre-  
scribed or  
authorized

(15) A document purporting to be a collection agreement  
entered into under this Act or an agreement with Canada  
for the collection of tax imposed under the income tax  
statute of an agreeing province that is,

Proof of  
provision of  
collection  
agreements

(a) published in the *Canada Gazette*; or

(b) certified as such by or on behalf of,

(i) the Provincial Minister, or

(ii) the Provincial Treasurer, the Provincial Secretary-Treasurer or the Minister of Finance of the appropriate agreeing province,

shall be received as *prima facie* evidence of the contents thereof.

Proof of  
return

(16) In any prosecution for an offence under this Act, the production of a return, certificate, statement or answer required by or under this Act or a regulation, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by him or on his behalf, shall be received as *prima facie* evidence that such return, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by him or on his behalf.

Proof of  
certificate  
of the  
Provincial  
Minister

(17) Every certificate by the Provincial Minister as to,

(a) a taxpayer's tax payable under the Federal Act as defined in clause 3 (6) (a); or

(b) a taxpayer's income for the year as defined in clause 3 (6) (d),

is *prima facie* evidence that a taxpayer's tax payable under the Federal Act, or his income for the year, as the case may be, is the amount set out therein.

Certificates  
of the  
Minister of  
National  
Revenue and  
his officials

(18) Where a collection agreement is entered into, any document or certificate that is executed or issued by the Minister, the Deputy Minister of the Department of National Revenue for Taxation, or an official of the Department of National Revenue on behalf or in place of the Provincial Minister, his deputy or an officer of his Ministry, shall be deemed, for all purposes of this Act, to be executed or issued by the Provincial Minister, his deputy or an officer of the Ministry of Revenue, as the case may be.

Royal  
Canadian  
Mounted  
Police

(19) Where a collection agreement is entered into, a reference in this section to the Ontario Provincial Police Force shall be construed as a reference to the Royal Canadian Mounted Police. R.S.O. 1970, c. 217, s. 47 (5-19); 1972, c. 1, s. 1.

## PART IV—COLLECTION OF TAX

## COLLECTION AGREEMENT

**50.**—(1) The Treasurer, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, enter into a collection agreement with the Government of Canada pursuant to which the Government of Canada will collect taxes payable under this Act on behalf of Ontario and will make payments to Ontario in respect of the taxes so collected in accordance with such terms and conditions as the collection agreement prescribes. <sup>Agreement authorized</sup>

(2) The Treasurer, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, enter into an agreement amending the terms and conditions of a collection agreement entered into pursuant to subsection (1). <sup>Supplemental agreements authorized</sup>

(3) Where a collection agreement is entered into, the Minister, on behalf of, or as agent for, the Provincial Minister, is hereby authorized to employ all the powers, to perform all the duties and to exercise any discretion that the Provincial Minister or the deputy head has under this Act including the discretion to refuse to permit the production in judicial or other proceedings in Ontario of any document that it is not, in the opinion of the Minister, in the interests of public policy to produce. <sup>Transfer of powers and duties</sup>

(4) Where a collection agreement is entered into, the Deputy Minister of National Revenue for Taxation of Canada may, <sup>Idem</sup>

(a) employ all the powers, perform the duties and exercise any discretion that the Minister has under subsection (3) or otherwise under this Act; and

(b) designate officers of his Department to carry out such functions, duties and powers as are similar to those that are exercised by them on his behalf under the Federal Act. R.S.O. 1970, c. 217, s. 48.

**51.**—(1) Where a collection agreement is entered into pursuant to section 50, the Government of Canada may collect the tax payable under subsection 3 (3) on behalf of Ontario. <sup>Authority to collect tax</sup>

(2) Where the aggregate of payments made to Ontario pursuant to subsection (1) exceeds the "federal share of the costs of the 1978 Economic Stimulation Program", as <sup>Authority to make adjusting payment</sup>

prescribed, the Treasurer may make an adjusting payment which shall be paid out of the Consolidated Revenue Fund to the Government of Canada.

Idem

(3) Where a collection agreement is entered into, the whole or any part of the amount of an adjusting payment that may be made pursuant to subsection (2) may be recovered by the Government of Canada in accordance with the terms and conditions contained in the collection agreement providing for the recovery of any amount received by Ontario in excess of the amount to which it is entitled.

Calculation  
of adjusting  
payment

(4) The amount of the adjusting payment to be made under subsection (2) shall be the amount calculated in the prescribed manner by which the aggregate of payments made to Ontario pursuant to subsection (1) exceeds the "federal share of the costs of the 1978 Economic Stimulation Program". 1978, c. 20, s. 3.

#### PAYMENTS ON ACCOUNT

Application  
of payments  
by taxpayer

**52.**—(1) A collection agreement may provide that, where any payment is received by the Minister on account of tax payable by a taxpayer for a taxation year under this Act, the Federal Act or an income tax statute of another agreeing province, or under any two or more such Acts or statutes, the payment so received may be applied by the Minister towards the tax payable by the taxpayer under any such Act or statute in such manner as is specified in the agreement, notwithstanding that the taxpayer directed that the payment be applied in any other manner or made no direction as to its application.

No further  
liability

(2) Any payment or part thereof applied by the Minister in accordance with a collection agreement towards the tax payable by a taxpayer for a taxation year under this Act,

(a) relieves the taxpayer of liability to pay such tax to the extent of the payment or part thereof so applied; and

(b) shall be deemed to have been applied in accordance with a direction made by the taxpayer. R.S.O. 1970, c. 217, s. 49.

#### DEDUCTIONS AT SOURCE

Where no  
action by  
employee

**53.** Where a collection agreement is entered into and an amount is remitted to the Minister under section 11 on account of the tax of an individual who is resident on the last day of the taxation year in another agreeing province,

- (a) no action lies for the recovery of such amount by that individual; and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act. R.S.O. 1970, c. 217, s. 50.

**54.**—(1) Where a collection agreement is entered into, <sup>Application of tax paid by employee</sup> an individual resident in Ontario on the last day of the taxation year is not required to remit any amount on account of tax payable by him under this Act for the taxation year to the extent of the amount deducted or withheld on account of his tax for that year under the income tax statute of another agreeing province.

(2) Where the total amount deducted or withheld on <sup>Idem</sup> account of tax payable under this Act and under the income tax statute of another agreeing province by an individual resident in Ontario on the last day of the taxation year to whom subsection (1) applies exceeds the tax payable by him under this Act for that year, section 19 of this Act applies in respect of such individual as though the excess were an overpayment under this Act. R.S.O. 1970, c. 217, s. 51.

**55.**—(1) In this section,

<sup>Interpretation</sup>

- (a) “adjusting payment” means a payment, calculated in accordance with this section, made by or on the direction of the Government of Ontario to a non-agreeing province;
- (b) “amount deducted or withheld” does not include any refund made in respect of that amount;
- (c) “non-agreeing province” means a province that is not an agreeing province.

(2) Where in respect of a taxation year a non-agreeing <sup>Adjustments between Ontario and non-agreeing province</sup> province is authorized to make a payment to Ontario that, in the opinion of the Treasurer, corresponds to an adjusting payment, the Lieutenant Governor in Council may authorize the Treasurer to make an adjusting payment to that non-agreeing province and enter into any agreement that may be necessary to carry out the purposes of this section.

(3) Where a collection agreement is entered into, the <sup>Basis of payment under collection agreement</sup> adjusting payment that may be made pursuant to subsection (2) may be made by the Government of Canada where it has agreed to act on the direction of Ontario as communicated by the Treasurer to the Minister.

Calculation  
of adjusting  
payment

(4) The adjusting payment to be made under this section shall be in an amount that is equal to the aggregate of the amounts deducted or withheld under section 11 in respect of the tax payable for a taxation year by individuals who,

- (a) file returns under the Federal Act;
- (b) are taxable thereunder in respect of that year; and
- (c) are resident on the last day of that year in the non-agreeing province to which the adjusting payment is to be made.

Where no  
action by  
employee

(5) Where an adjusting payment is to be made and there has been an amount deducted or withheld under section 11 on account of the tax for a taxation year of an individual who is taxable under the Federal Act in respect of that year and who is resident on the last day of that taxation year in the non-agreeing province,

- (a) no action lies for the recovery of such amount by that individual; and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act.

Application  
of tax paid  
by employee

(6) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year, an individual resident in Ontario on the last day of the taxation year is not required to remit any amount on account of tax payable by him under this Act for the taxation year to the extent of the amount deducted or withheld on account of his income tax for that year under the law of that non-agreeing province.

Idem

(7) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year, the total amount deducted or withheld on account of tax payable under this Act and on account of the income tax payable under the law of the non-agreeing province by an individual resident in Ontario on the last day of the taxation year to whom subsection (6) applies exceeds the tax payable by him under this Act for that year, section 19 of this Act applies in respect of such individual as though the excess were an overpayment under this Act. R.S.O. 1970, c. 217, s. 52 (1-7).

Adjusting  
payment to  
non-  
agreeing  
province  
under  
collection  
agreement

(8) Where a collection agreement is entered into and the Government of Canada has agreed in respect of a taxation

year to carry out the direction of Ontario and to make an adjusting payment on behalf of Ontario, the adjusting payment,

- (a) shall be made out of any moneys that have been collected on account of tax under this Act for any taxation year; and
- (b) shall be the amount calculated by the Minister to be the amount required to be paid under subsection (4),

and the payment thereof discharges any obligations the Government of Canada may have with respect to the payment to Ontario of any amount deducted or withheld under section 11 to which subsection (5) applies. R.S.O. 1970, c. 217, s. 52 (8); 1978, c. 11, s. 4.

#### RECIPROCAL ENFORCEMENT OF JUDGMENTS

**56.**—(1) A judgment of a superior court of an agreeing province under that province's income tax statute, including any certificate registered in such superior court in a manner similar to that provided in subsection 31 (2), may be enforced in the manner provided in the *Reciprocal Enforcement of Judgments Act*. Enforcement  
of judgments  
  
R.S.O. 1980,  
c. 432

(2) For the purposes of subsection (1), where a judgment of a superior court of an agreeing province is sought to be registered under the *Reciprocal Enforcement of Judgments Act*, such judgment shall be registered, notwithstanding that it is established that one or more of the provisions of section 3 of that Act apply. Idem

(3) For the purposes of subsection (1), the Lieutenant Governor in Council may make regulations to enable the enforcement of judgments in respect of taxes in agreeing provinces to be enforced in Ontario. R.S.O. 1970, c. 217, s. 53. Idem



## CHAPTER 214

## Indian Welfare Services Act

## 1. In this Act,

Interpre-  
tation

- (a) "Indian" means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);

R.S.C. 1970,  
c. I-6

- (b) "Minister" means the Minister of Community and Social Services. R.S.O. 1970, c. 218, s. 1; 1972, c. 1, s. 19 (3).

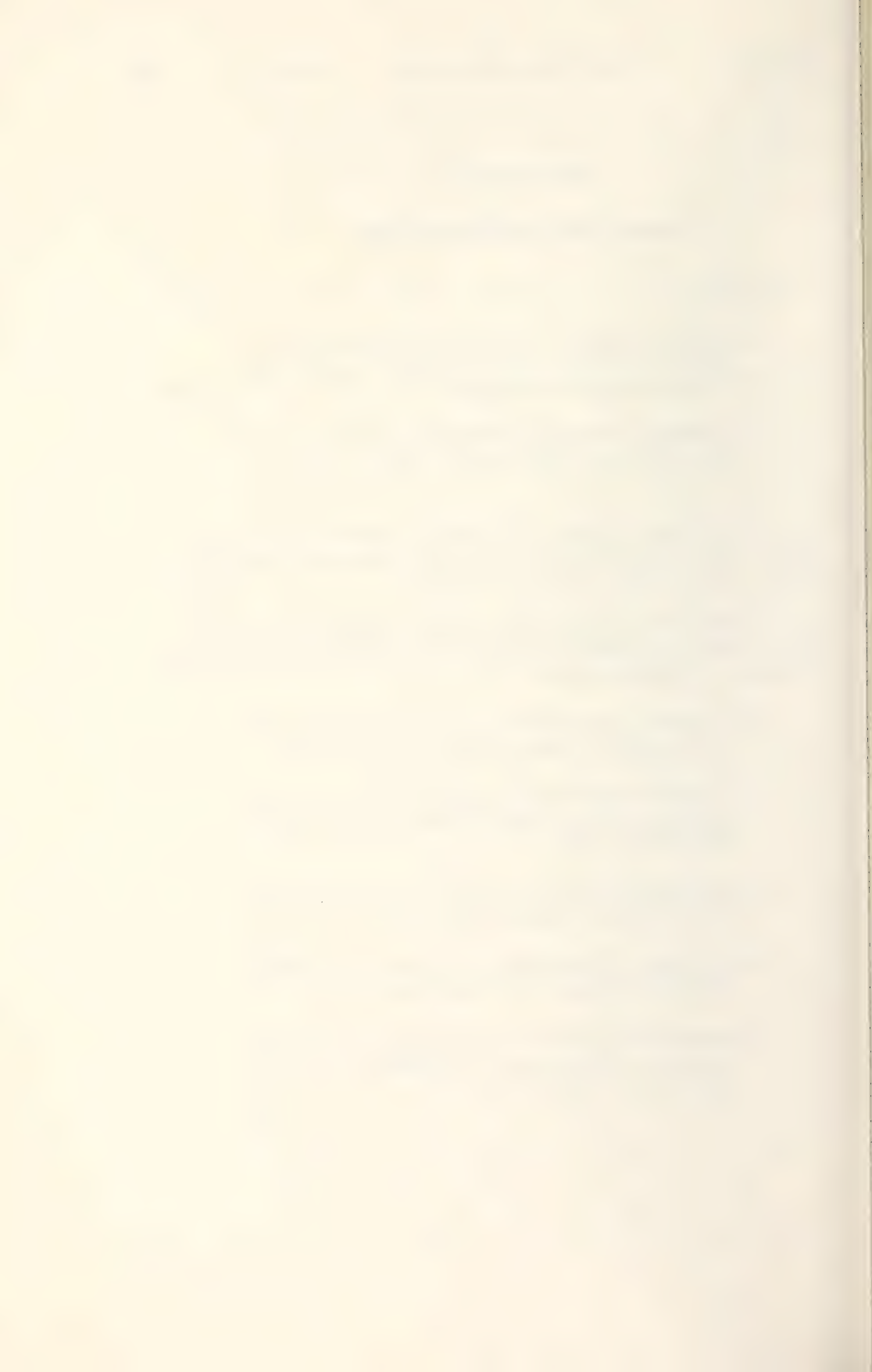
2. Every Indian resident in Ontario is entitled to the benefits of the *Family Benefits Act* to the same extent as any other person. R.S.O. 1970, c. 218, s. 2, *revised*.

Indians  
eligible  
for welfare  
benefits  
R.S.O. 1980,  
c. 151

3. The Minister, with the approval of the Lieutenant Governor in Council, may make agreements with the Crown in right of Canada, or an agency thereof,

Canada-  
Ontario  
agreements  
authorized

- (a) to provide compensation to any children's aid society that extends its facilities and services to Indians;
- (b) to provide compensation to any authority operating a home for the aged that provides accommodation and care for Indians;
- (c) respecting the payment of the cost of providing general welfare assistance for Indians;
- (d) respecting the payment of the cost of providing rehabilitation services for Indians; and
- (e) respecting the provision and payment of such other services as will promote the well-being of Indians.  
R.S.O. 1970, c. 218, s. 3.



## CHAPTER 215

Industrial and Mining Lands  
Compensation Act

1. It is lawful for an owner or operator of a mine, factory, industry or works, or a person contemplating acquiring or operating a mine, factory, industry or works, to make an agreement with the owner or lessee of any land for payment to the owner or lessee of the land of compensation for any damage or injury resulting or likely to result to the land or to its use and enjoyment from the operation of the mine, factory, industry or works in connection therewith. R.S.O. 1970, c. 219, s. 1.

Agreement  
for com-  
pensation

2. The agreement, if so expressed therein, binds and enures to the benefit of the heirs, executors, administrators and assigns, or the successors and assigns of the parties thereto, and may relate not only to a mine, factory, industry or works then in operation, but may also relate to a mine, factory, industry or works that may thereafter be established by the party paying the compensation, within a specified area, even though the land upon which the mine, factory, industry or works is thereafter operated is not at the time owned or leased by the party making the compensation. R.S.O. 1970, c. 219, s. 2.

Effect and  
extent of  
operation of  
agreement

3. Where the land in respect of which the agreement is made is not under the *Land Titles Act*, the agreement shall be registered, and where the land is under the *Land Titles Act*, a notice of the agreement shall be registered in the register of the title of the parcel of land on which the burden is imposed with a note referring to this Act, and any subsequent agreement cancelling an agreement so registered or in respect of which a notice is registered shall in like manner be registered or the notice deleted, as the case may be. R.S.O. 1970, c. 219, s. 3.

Registra-  
tion of  
agreement  
R.S.O. 1980,  
c. 230

4. The payment of compensation under the agreement affords a complete answer to any action that may be brought for damages or for an injunction in respect of any matter for which compensation has been made. R.S.O. 1970, c. 219, s. 4.

Payment of  
compen-  
sation to be  
an answer  
to action



## CHAPTER 216

## Industrial Standards Act

## 1. In this Act,

Interpre-  
tation

- (a) "Director" means the Director of Labour Standards;
- (b) "employee" means a person who is in receipt of or entitled to wages;
- (c) "employer" includes a person who by himself or his agent or representative is directly or indirectly responsible for the payment of wages to a person who comes within the provisions of a schedule promulgated as hereinafter provided;
- (d) "industry" includes a business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof and any combination thereof that the Minister designates;
- (e) "Minister" means the Minister of Labour or such member of the Executive Council as is for the time being charged with the administration of this Act;
- (f) "officer" means an industrial standards officer appointed under this Act;
- (g) "wages" includes any form of remuneration for labour performed and, without restricting the generality of the foregoing, includes payment at an hourly, daily, weekly or monthly rate or at a piece-work or unit-price rate on an incentive or production basis. R.S.O. 1970, c. 221, s. 1.

2. The Lieutenant Governor in Council may appoint one or more persons as industrial standards officers whose duty it is to assist in carrying out this Act and the regulations and schedules. R.S.O. 1970, c. 221, s. 2.

3. Every officer has such powers and duties as are prescribed by this Act and the regulations and has authority to conduct inquiries and investigations respecting all matters coming within the scope of such powers and duties and, for such purposes, has the powers of a commission under Part II

R.S.O. 1980,  
c. 411

of the *Public Inquiries Act*, which Part applies to such inquiries and investigations as if they were inquiries under that Act. 1971, c. 50, s. 49.

Director  
of Labour  
Standards  
and  
Adminis-  
trator of  
Industrial  
Standards

**4.** A Director of Labour Standards shall be appointed for the purposes of this Act, and the Minister may designate an officer of the Ministry of Labour as Administrator of Industrial Standards who may perform the duties and exercise the powers of the Director under his direction. R.S.O. 1970, c. 221, s. 4; 1972, c.1, s. 1.

Designation  
of zones

**5.**—(1) The Minister may designate the whole of Ontario, or any part or parts thereof, as a zone or zones for an industry for the purposes of this Act and may enlarge, reduce or divide any designated zone.

Interprovin-  
cially com-  
petitive  
industries

(2) Notwithstanding subsection (1), a zone for an industry that is designated as an interprovincially competitive industry under clause 7 (e) shall be the whole of Ontario, and any schedule for the industry may provide for different wages and hours and days of labour for different areas in the zone. R.S.O. 1970, c. 221, s. 5.

Designation  
of industries

**6.** The Minister may designate an industry for the purposes of this Act and may amend any designation, and, where the designated industry is not enlarged by the amendment, any schedule applying to the industry, when the amendment was made, applies to the amended designation. R.S.O. 1970, c. 221, s. 6.

Powers of  
Director

**7.**—(1) The Director has jurisdiction and authority,

- (a) to administer and enforce this Act, the regulations and the schedules;
- (b) to hear appeals from the decisions of any advisory committee;
- (c) subject to subsection (2) and subject to the approval of the Lieutenant Governor in Council, and with the concurrence of the proper advisory committee, to amend any schedule, after giving notice of the terms of the proposed amendment by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone in which the schedule is in force;
- (d) to require any employer to pay to the Director the arrears of wages owing to an employee or employees according to any schedule and in his discretion to direct that the whole or a part of such wages be either forfeited to the Crown or paid to the employee or employees entitled thereto;

(e) to determine and designate which industries are interprovincially competitive, and with respect to any such industry,

- (i) may approve or withhold approval of a schedule with respect to the collection of revenue from employers and employees in the industry and with respect to the exercise by the advisory committee of any powers in connection with the collection of such assessments and the disbursement of moneys collected, except that the assessments that may be approved shall not exceed one-half of one per cent of an employee's wages and one-half of one per cent of an employer's pay-roll,
- (ii) may require the advisory committee to furnish estimates of receipts and expenses annually, and to furnish quarterly reports, certified by an auditor approved by the Director, accounting for all money collected and disbursed.

(2) Where a schedule applies to a zone that is the whole of Ontario, publication of the terms of the proposed amendment in at least five newspapers designated by the Minister is sufficient notice for the purposes of clause (1)(c). R.S.O. 1970, c. 221, s. 7. Publication of amendment to schedule applying to whole of Ontario

8.—(1) The Minister may, upon the petition of representatives of employers or employees in an industry in a designated zone or zones, authorize an officer to convene a conference of the employers and employees in the industry for the purpose of investigating and considering the conditions of labour and the practices prevailing in the industry and for negotiating with respect to any of the matters enumerated in subsection 9 (1), and, subject to subsection (3), notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone for which the conference is to be held. Officer may convene conference

(2) The conference may submit to the Minister, through the officer who convenes the conference, a schedule in accordance with subsection 9 (1). Submission of schedule

(3) Where the zone referred to in subsection (1) is the whole of Ontario, notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in at least five newspapers as determined by the Minister. R.S.O. 1970, c. 221, s. 8. Notice of conference where zone is whole of Ontario

What  
schedule  
may  
provide

**9.—(1)** A schedule may,

- (a) establish the maximum number of hours comprising the regular working day and prescribe the hours of the day during which such hours of work are to be performed;
- (b) establish the maximum number of hours comprising the regular working week;
- (c) establish the minimum rates of wages for the regular working periods;
- (d) establish the particular days in the week for the performance of labour in the industry;
- (e) establish the rates of wages and the periods for, and the conditions governing, overtime work;
- (f) establish vacations with pay or payment in lieu thereof and payment for any day that may be designated as a holiday in the schedule;
- (g) classify the employees and employers and separately provide for each classification with respect to any of the matters that may be dealt with in the schedule;
- (h) define any term used in the schedule;
- (i) specify the particular operations that are included in the industry and prescribe the conditions under which the operations are included;
- (j) prohibit overtime work without a permit and authorize the advisory committee to issue the permits subject to the terms and conditions of the schedule;
- (k) fix the minimum charge that is to be paid, accepted or contracted for with respect to the labour content of any service, work, operation or art and, with the approval of the Director, fix the minimum charge that an employer or employee is to contract for or accept for any service, work, operation or art;
- (l) authorize the advisory committee to fix a minimum rate of wages lower than the rate fixed by the schedule for any classification of employees or for any individual who performs work included in more than one classification of employees, or whose work is only partly subject to the schedule, or who is handicapped;

- (m) subject to the approval of the Director and with respect only to an interprovincially competitive industry, assess employers only or employers and employees in any such industry to provide revenue for the enforcement of the schedule, and authorize the advisory committee generally to administer and enforce the schedule, and to collect the assessments, and out of the revenue collected to engage inspectors and other personnel and to make such expenditures as are necessary for such administration and enforcement.

(2) When the advisory committee fixes a minimum rate of wages lower than the rate fixed by the schedule, such lower rate shall be deemed to be the rate fixed by the schedule. When advisory committee fixes rate lower than schedule  
R.S.O. 1970, c. 221, s. 9.

**10.**—(1) The Minister may direct the officer who convenes a conference to conduct further investigations into the conditions of labour and the practices prevailing in the industry, and the officer may recommend variations in the schedule proposed by the conference. Investigation of conditions and practices

(2) If, in the opinion of the Minister, the schedule submitted by the conference is agreed to by a proper and sufficient representation of employers and employees, the Minister may approve the schedule submitted by the conference with such variations recommended by the officer convening the conference as the Minister considers desirable. Approval of schedule by Minister

(3) Upon the recommendation of the Minister, the Lieutenant Governor in Council may declare the schedule to be in force during pleasure and to be binding upon all employers and employees in a designated industry and zone. Declaring schedule in force  
R.S.O. 1970, c. 221, s. 10.

**11.** Every employer affected by a schedule shall cause a copy of the schedule to be posted in a conspicuous place where his employees are engaged in their duties so that it may be readily seen and read by them and shall cause the schedule to be there maintained so long as it remains in force. Posting of schedule  
R.S.O. 1970, c. 221, s. 11.

**12.** For the purposes of this Act, every person who is in any way engaged in an industry shall, in so far as he personally performs work in the industry, be deemed an employee and, in so far as he employs another person or is the proprietor of a shop or business either alone or in partnership with another person be deemed an employer, and this Act and the regulations and schedules shall, with necessary modifications, be read One man operators and partners within the scope of the Act

and construed accordingly, notwithstanding that he may thereby become both an employer and an employee or may become an employer for one purpose and an employee for another purpose, or that his status may be changed from time to time. R.S.O. 1970, c. 221, s. 12.

Records to  
be kept by  
employers

**13.**—(1) An employer to whom a schedule applies shall make and keep, or cause to be made and kept, for a period of at least twelve months after work is performed by an employee, a record of the name, address, wage rate, vacations with pay or payment in lieu of vacations, hours worked and actual earnings of the employee and such other information as the regulations may require.

Inspection  
of records

(2) The employer shall,

(a) produce the record for inspection by any person authorized by the Director, and shall for this purpose provide access to his premises for such person at all reasonable times and at any time his employees are engaged in their work; and

(b) furnish such information from the record at such time and place as the Director may require.

Notice to  
furnish  
information

(3) No employer is required to furnish information under clause (2) (b) unless the Director sends a notice to the employer requiring him to furnish the information within the time specified in the notice, and the information furnished shall be verified by a statutory declaration made by the employer or, where the employer is a corporation, by an officer thereof.

Extracts  
from  
records

(4) Any person who inspects a record under subsection (2) may take extracts from or make copies of any entry in the record.

False or  
misleading  
information

(5) An employer shall not make, keep or furnish, or cause to be made, kept or furnished, false or misleading entries on any records that he is required to make, keep or furnish by this Act or the regulations and shall not supply or cause to be supplied false or misleading information to the Director or any person acting under his authority. R.S.O. 1970, c. 221, s. 13.

Admis-  
sibility of  
extracts  
furnished by  
employer

**14.** Any extract, copy or information furnished by an employer under section 13 is admissible in evidence as *prima facie* proof of the contents of the record and has the same force and effect as the original record would have if produced. R.S.O. 1970, c. 221, s. 14.

**15.—**(1) A certificate of the Director certifying,

Admissibility of Director's certificate

- (a) that a notice was sent in accordance with subsection 13 (3) is admissible in evidence as *prima facie* proof that the notice was sent to and received by the employer to whom it was addressed; or
- (b) that the information required under subsection 13 (3) has not been furnished is admissible in evidence as *prima facie* proof that the information required has not been furnished.

(2) A certificate signed or purporting to be signed by the Director is admissible in evidence as *prima facie* proof of the facts stated therein and of the authority of the Director to make the certificate without proof of appointment or signature. R.S.O. 1970, c. 221, s. 15.

**16.** The sending of a notice or document to any person for the purposes of this Act or the regulations or any schedule shall be effected,

Method of serving or sending

- (a) by serving it personally on such person ;
- (b) by leaving it at the place of his last known or usual residence or, alternatively in the case of an employer, by leaving it at the office or business premises of the employer ; or
- (c) by mailing it by prepaid first-class mail addressed to the person at his last known or usual residence or, alternatively in the case of an employer, addressed to the office or business premises of the employer without naming him in the address,

and the leaving or mailing shall be deemed conclusively to be good and sufficient sending on the date of the leaving or mailing. R.S.O. 1970, c. 221, s. 16.

**17.** The Lieutenant Governor in Council may make such regulations as he considers necessary for carrying out this Act and for its efficient administration. R.S.O. 1970, c. 221, s. 17.

Regulations

**18.—**(1) For every zone or group of zones to which a schedule applies, the Minister may establish an advisory committee of not more than five members, one of whom shall be designated as chairman, and the committee may hear complaints of employers and employees to whom such schedule applies and may generally assist in carrying out this

Advisory committee

Act and the regulations and have jurisdiction and authority to do anything that it is authorized to do by such schedule, notwithstanding that one or more members are employers or employees in the industry or zone to which the schedule applies, and shall be deemed to be a corporation for the purpose of collecting any money that it is authorized to collect or paying any money that it is authorized to pay.

**Quorum**

(2) Three members of an advisory committee constitute a quorum whether or not a vacancy exists in the membership of the committee.

**Expenses**

(3) The expenses of the members of an advisory committee properly incurred in carrying out their duties may be paid out of the moneys appropriated therefor by the Legislature.

**Issuance of overtime permits**

(4) Where a schedule authorizes an advisory committee to issue permits for overtime work, the permits may be issued by such person or persons as the committee designates.

**Appeal from decision of advisory committee**

(5) An employer or employee aggrieved by a decision of an advisory committee has a right of appeal from the decision to the Director, and the Director has jurisdiction to hear and determine the appeal, and his decision is final. R.S.O. 1970, c. 221, s. 18.

**Offence**

**19.**—(1) Every employer who contravenes a schedule that is applicable to him or who permits or condones work in contravention thereof is guilty of an offence and on conviction is liable, for a first offence, to a fine of not less than \$50 and not more than \$200 and, in default of payment, to imprisonment for a term of not more than two months, and, for any subsequent offence, to a fine of not less than \$100 and not more than \$1,000 and, in default of payment, to imprisonment for a term of not more than six months, and, where the conviction is for failing to pay the minimum rate of wages prescribed by the schedule, shall be ordered to pay to the Director, as an additional penalty, the full amount of the wages found to be unpaid to any employee under the schedule, and the Director, in his discretion, may direct that the whole or a part of such wages be either forfeited to the Crown or paid to the employee or employees entitled thereto.

**Enforcement of order to pay wages**

(2) A copy of an order for payment of wages made under subsection (1) that has become final, certified as a true copy, may be filed by the Director with the clerk of the county or district court of a county or district in which the employer carries on business or, where the amount ordered to be paid does not exceed \$1,000, with the clerk of a like small claims court, and, when so filed and upon payment of the fees of the clerk of the court, such order becomes an

order of the court in which it is filed and may be enforced as a judgment of the court against the employer for the amount mentioned in the order and the fees so paid.

(3) Every employee who contravenes a provision of a schedule <sup>Offence</sup> is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 and, in default of payment, to imprisonment for a term of not more than ten days.

(4) No prosecution shall be instituted under this Act with- <sup>Consent to prosecution</sup> out the consent of the Director, and the production of a consent purporting to be signed by the Director is admissible in evidence as *prima facie* proof of his consent. R.S.O. 1970, c. 221, s. 19.

**20.** Every person who contravenes any of the provisions of <sup>Offence</sup> this Act or the regulations is guilty of an offence and on conviction, where no penalty has been specifically provided, is liable, for a first offence, to a fine of not less than \$50 and not more than \$200 and, in default of payment, to imprisonment for a term of not more than thirty days, and, for any subsequent offence, to a fine of not less than \$100 and not more than \$1,000 and, in default of payment, to imprisonment for a term of not more than six months. R.S.O. 1970, c. 221, s. 20.

**21.—**(1) No employer may discharge or threaten to dis- <sup>Intimidation</sup> charge or in any way discriminate against an employee because the employee,

(a) has testified or is about to testify in any proceeding or investigation had or taken under this Act; or

(b) has given any information to the Director or to any person authorized by the Director regarding earnings, hours, days or conditions of labour of employees in an industry.

(2) In addition to the penalty prescribed for a breach of subsection (1), the court, in its discretion, may order the employer to <sup>Reinstatement</sup> reinstate the employee with or without the payment of compensation by the employer for loss of earnings and other employment benefits.

(3) Where an order is made under subsection (2), the employee <sup>Enforcement of order for reinstatement</sup> in respect of whom the order is made may file a copy of the order, certified as a true copy, in the office of the Registrar of the Supreme Court, whereupon the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such, but the part of the order requiring payment of compensation is not enforceable until the order has become final.

Appeal not  
to operate  
as stay

(4) Where an order made under subsection (2) requires an employer to reinstate an employee in employment and the employer appeals from the order, the appeal shall not operate as a stay of execution of the part of the order requiring the reinstatement. R.S.O. 1970, c. 221, s. 21.

Application  
of other  
Acts  
R.S.O. 1980,  
cc. 137, 321,  
302, 536

**22.**—(1) Subject to subsection (2), the *Employment Standards Act*, the *Occupational Health and Safety Act*, sections 211, 212 and 213 of the *Municipal Act* and the *Woodmen's Employment Act* shall be read and construed as being subject to this Act and any schedule or regulation made thereunder.

Rates of  
wages

(2) Where a schedule under this Act prescribes rates of wages, vacations with pay or hours of labour that are different from those prescribed by or under any Act referred to in subsection (1), the greater rate of wages and vacations with pay and the lesser hours of labour shall prevail.

Apprentices  
R.S.O. 1980,  
c. 24

(3) The rates of wages for apprentices to whom the *Apprenticeship and Tradesmen's Qualification Act* applies shall be the rates provided under that Act and the regulations thereunder. R.S.O. 1970, c. 221, s. 22.

Where  
schedules  
not to  
apply

**23.** No schedule shall apply to the mining industry or to the agricultural industry. R.S.O. 1970, c. 221, s. 23.

Interpre-  
tation

**24.**—(1) In this section, "retail gasoline service industry" means the business of operating retail gasoline service stations, gasoline pumps or outlets where gasoline is offered for sale at retail, including washing, waxing, oiling or lubricating automotive vehicles, repairing or changing tires and other services and undertakings incidental thereto, but does not include a gasoline outlet on the premises of an employer and used in the fueling of automotive vehicles owned or operated by the employer.

Exception  
as to retail  
gasoline  
service  
industry

(2) Notwithstanding anything in this Act, no schedule applicable to the retail gasoline service industry shall prescribe the hours of the day during which the hours of work may be performed or shall establish the particular days of the week for the performance of labour in the industry. R.S.O. 1970, c. 221, s. 24.

## CHAPTER 217

## Innkeepers Act

## 1. In this Act,

Interpre-  
tation

(a) "inn" includes a hotel, inn, tavern, public house or other place of refreshment, the keeper of which is by law responsible for the goods of his guests;

(b) "innkeeper" means the keeper of any such place.  
R.S.O. 1970, c. 223, s. 1.

2.—(1) An innkeeper, boarding-house keeper or lodging-house keeper has a lien on the goods of his guest, boarder or lodger for the value or price of any food or accommodation furnished to him or on his account.

Lien on goods  
for accom-  
modation,  
etc.

(2) In addition to all other remedies provided by law, he has the right, in case the same remains unpaid for three months, to sell by public auction the goods of the guest, boarder or lodger, on giving one week's notice of the intended sale by advertisement in a newspaper published in the municipality in which the inn, boarding house or lodging house is situate or, in case there is no newspaper published in the municipality, in a newspaper published nearest to the inn, boarding house or lodging house.

Power  
to sell

(3) The advertisement shall state the name of the guest, boarder or lodger, the amount of his indebtedness, the time and place of sale, and the name of the auctioneer, and shall give a description of the goods to be sold.

Particulars  
in notice

(4) The innkeeper, boarding-house keeper or lodging-house keeper may apply the proceeds of the sale in payment of the amount due to him and the costs of the advertising and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. R.S.O. 1970, c. 223, s. 2.

Proceeds of  
sale, applica-  
tion

3.—(1) The keeper of a livery stable or a boarding stable has a lien on every horse or other animal boarded at or carriage left in his livery stable or boarding stable for his reasonable charges for boarding and caring for the horse, animal or carriage.

Lien on  
horses and  
carriages

Lien on  
horses, etc.,  
and power  
to sell

(2) Where an innkeeper, boarding-house keeper, lodging-house keeper, livery-stable keeper or boarding-stable keeper has a lien upon a horse, other animal or carriage for the value or price of any food or accommodation supplied, or for care or labour bestowed thereon, he has, in addition to all other remedies provided by law, the right, in case the same remains unpaid for two weeks, to sell by public auction the horse, animal or carriage on giving two weeks notice of the intended sale by advertisement in a newspaper published in the municipality in which the inn, boarding house, lodging house, livery stable or boarding stable is situate or, in case there is no newspaper published in the municipality, in a newspaper published nearest to the inn, boarding house, lodging house, livery stable or boarding stable.

Advertise-  
ment of  
intended  
sale

(3) The advertisement shall state the name, if known, of the person or persons who brought the horse, animal or carriage to the inn, boarding house, lodging house, livery stable or boarding stable, the amount of the indebtedness, and the name of the auctioneer, and shall give a description of the horse, animal or carriage.

Proceeds of  
sale, appli-  
cation

(4) The innkeeper, boarding-house keeper, lodging-house keeper, livery-stable keeper or boarding-stable keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of the advertisement and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. R.S.O. 1970, c. 223, s. 3.

Limitation  
of inn-  
keeper's  
liability

4.—(1) No innkeeper is liable to make good to any guest of his any loss of or injury to goods brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or a carriage, to a greater amount than the sum of \$40 except,

except where  
default or  
neglect

(a) where the goods have been stolen, lost or injured through the wilful act, default, or neglect of the innkeeper or a servant in his employ;

or unless de-  
posited with  
him for safe-  
keeping

(b) where the goods have been deposited expressly for safe custody with the innkeeper.

Conditions  
of liability

(2) In case of such deposit, it is lawful for the innkeeper, if he thinks fit, to require, as a condition of his liability, that the goods shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the goods. R.S.O. 1970, c. 223, s. 4.

Conse-  
quences of  
failure to  
take charge  
of goods

5. If an innkeeper refuses to receive for safe custody, as mentioned in clause 4 (1) (b), any goods of his guest or if the guest, through any default of the innkeeper, is unable to deposit such

goods, the innkeeper is not entitled to the benefit of this Act in respect thereof. R.S.O. 1970, c. 223, s. 5. .

6. Every innkeeper shall cause to be kept conspicuously posted up in the office and public rooms and in every bedroom in his inn a copy of section 4 printed in plain type, and he is entitled to the benefit thereof in respect of such goods only as are brought to his inn while such copy is so posted up. R.S.O. 1970, c. 223, s. 6.

Copy of section 4 to be conspicuously exhibited

7.—(1) Subject to subsection (5), where the claim under the lien of an innkeeper, lodging-house keeper or boarding-house keeper, upon the goods of his guest exceeds the amount due in respect of one week's board or lodging, the guest may, on payment or tender of that amount, obtain possession of the goods at any time before sale thereof whatever may be the amount due by the guest, unless a provincial judge upon application to him otherwise orders.

Limitation upon lien of innkeeper, etc.

(2) In case of a retention or seizure by an innkeeper, lodging-house keeper or boarding-house keeper, the guest or owner of the goods seized may apply to a provincial judge who may in a summary manner make such order as to the custody of the goods as seems fair to him under the circumstances, notwithstanding the lien created by this Act or otherwise.

Jurisdiction of provincial judge

(3) Every person who contravenes subsection (1) or an order made under this section is guilty of an offence and on conviction is liable to a fine of not more than \$50 or to imprisonment for not more than thirty days, or to both.

Offence

(4) Notwithstanding any other provision of this Act, a provincial judge acting under subsections (1) to (3) shall exercise his absolute discretion as to the disposal of any matter coming before him under such subsections.

Discretion of provincial judge

(5) Where possession of the goods of a guest is claimed by an innkeeper under his lien thereon, the guest or the owner of the goods is only entitled to obtain possession thereof under subsection (1) by an order of a provincial judge upon application made by the guest or owner for such order and after notice of the application has been given in writing to the innkeeper in accordance with the directions of the provincial judge. R.S.O. 1970, c. 223, s. 7.

Application for recovery where goods held by innkeeper

8. On a day to be named by proclamation of the Lieutenant Governor,

ss. 2, 3, 7, amended

(a) section 2 is amended by striking out "boarding-house keeper or lodging-house keeper", "boarder or lodger"

and "boarding house or lodging house" where those expressions occur;

(b) section 3 is amended by striking out "boarding-house keeper, lodging-house keeper" and "boarding house, lodging house" where those expressions occur;

(c) section 7 is amended by striking out "lodging-house keeper or boarding-house keeper" where that expression occurs. 1979, c. 78, s. 136.

## CHAPTER 218

## Insurance Act

## INTERPRETATION

1. In this Act, except where inconsistent with the <sup>Interpre-</sup> interpretation sections of any Part,

1. “accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;
2. “accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;
3. “actuary” means a Fellow of the Canadian Institute of Actuaries;
4. “adjuster” means a person who,
  - i. on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
  - ii. holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include,

- iii. a barrister or solicitor acting in the usual course of his profession,

- iv. a trustee or agent of the property insured,
  - v. a salaried employee of a licensed insurer while acting on behalf of such insurer in the adjustment of losses,
  - vi. a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or
  - vii. a person who acts as an adjuster of marine losses only;
5. "agent" means a person who, for compensation, not being a duly licensed insurance broker or not being a person acting under the authority of subsection 346 (15), (16), (17) or (18), solicits insurance on behalf of an insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from such insurer or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal;
6. "aircraft insurance" means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation thereof;
7. "appeal" includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by way of an order in the nature of *certiorari* or otherwise;
8. "automobile" includes a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, watercraft or aircraft;
9. "automobile insurance" means insurance,
- (a) against liability arising out of,
    - (i) bodily injury to or the death of a person, or
    - (ii) loss of or damage to property,
- caused by an automobile or the use or operation thereof; or

- (b) against loss of or damage to an automobile and the loss of use thereof,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described in clause (a);

10. "boiler and machinery insurance" means insurance against loss or damage to property and against liability for loss or damage to persons or property through the explosion, collapse, rupture or breakdown of, or accident to, boilers or machinery of any kind;
11. "broker" means a person who, for compensation, not being a licensed agent or not being a person acting under the authority of subsection 346 (15), (16), (17) or (18), acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance or in negotiating the continuance or renewal of such contracts for a person other than himself; R.S.O. 1970, c. 224, s. 1, pars. 1-11.
12. "cash-mutual corporation" means a corporation without share capital that is empowered to undertake insurance on both the cash plan and the mutual plan; R.S.O. 1970, c. 224, s. 1, par. 12; 1971, c. 84, s. 1 (1).
13. "chief agency" means the principal office or place of business in Ontario of any licensed insurer having its head office out of Ontario;
14. "contract" means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
15. "credit insurance" means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;
16. "disability insurance" means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease;

17. "due application" includes such information, evidence and material as the Superintendent requires to be furnished, and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act;
18. "employers' liability insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment, but does not include workmen's compensation insurance;
19. "endowment insurance", as applied to a fraternal society, means an undertaking to pay an ascertained or ascertainable sum at a fixed future date if the person whose life is insured is then alive, or at his death if he dies before such date;
20. "exchange" or "reciprocal or inter-insurance exchange" means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney;
21. "foreign jurisdiction" means a jurisdiction other than Ontario;
22. "fire insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition;
23. "fraternal society" means a society, order or association incorporated for the purpose of making with its members only, and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;
24. "governing executive authority" means the executive committee, executive board, management committee, grand executive committee or such other board, committee or body as is charged under the constitution and rules of a fraternal society with its general management between general meetings;
25. "guarantee insurance" means the undertaking to perform an agreement or contract or to discharge a

trust, duty or obligation upon default of the person liable for such performance or discharge or to pay money upon such default or in lieu of such performance or discharge, or where there is loss or damage through such default, but does not include credit insurance; R.S.O. 1970, c. 224, s. 1, pars. 13-25.

26. "hail insurance" means insurance against loss of or damage to crops in the field, whether growing or cut, caused by hail; 1972, c. 66, s. 1 (1).
27. "head office" means the place where the chief executive officer of an insurer transacts his business;
28. "industrial contract" means a contract of life insurance for an amount not exceeding \$2,000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and that provides for payment of premiums at fortnightly or shorter intervals, or, if the premiums are usually collected at the home of the insured, at monthly intervals;
29. "inland transportation insurance" means insurance (other than marine insurance) against loss of or damage to property,
  - i. while in transit or during delay incidental to transit, or
  - ii. where, in the opinion of the Superintendent, the risk is substantially a transit risk; R.S.O. 1970, c. 224, s. 1, pars. 27-29.
30. "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance; 1980, c. 55, s. 1.
31. "insurance fund" or "insurance funds", as applied to a fraternal society or as applied to a corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities,

but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;

32. "insurance money" means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses, and annuities payable under the contract;
33. "insurance on the cash plan" means any insurance that is not mutual insurance;
34. "insurer" means the person who undertakes or agrees or offers to undertake a contract; R.S.O. 1970, c. 224, s. 1, pars. 31-34.
35. "life insurance" means an undertaking by an insurer to pay insurance money,

(a) on death; or

(b) on the happening of an event or contingency dependent on human life; or

(c) at a fixed or determinable future time; or

(d) for a term dependent on human life,

and, without restricting the generality of the foregoing, includes,

(e) accidental death insurance but not accident insurance;

(f) disability insurance; and

(g) an undertaking entered into by an insurer to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount and such an undertaking shall be deemed always to have been life insurance. 1980, c. 55, s. 1.

36. "live stock insurance" means insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss through the death or sickness of or accident to an animal;
37. "lodge" includes a primary subordinate division, by whatever name known, of a fraternal society; R.S.O. 1970, c. 224, s. 1, pars. 27-37.

38. "marine insurance" means insurance against,

(a) liability arising out of,

(i) bodily injury to or death of a person,  
or

(ii) the loss of or damage to properties; or

(b) the loss of or damage to property,

occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incidental thereto, or during transit otherwise than by water incidental to such a voyage or marine adventure; 1972, c. 66, s. 1 (2).

39. "Minister" means the Minister of Consumer and Commercial Relations; 1972, c. 1, s. 42 (1).

40. "motor vehicle liability policy" means a policy or part of a policy evidencing a contract insuring,

(a) the owner or driver of an automobile; or

(b) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

41. "mutual benefit society" means a mutual corporation formed for the purpose of providing sick and funeral benefits for its members, or for these and any other purposes necessary or incidental thereto except life insurance, but does not include a pension fund or employees' mutual benefit society incorporated under or subject to the *Corporations Act*; R.S.O. 1980, c. 95, s. 95.

42. "mutual corporation" means a corporation without share capital that is empowered to undertake mutual insurance exclusively; R.S.O. 1970, c. 224, s. 1, par. 42; 1971, c. 84, s. 1 (2).

43. "mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at

fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts, whether or not the maximum amount of such consideration is predetermined;

44. "non-owner's policy" means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;
45. "officer" includes a trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer and a person appointed by the insurer to sue and be sued in its behalf;
46. "owner's policy" means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;
47. "paid in", when applied to the capital stock of an insurer or to any shares thereof, means the amount paid to the insurer on its shares, not including the premium, if any, paid thereon, whether such shares are or are not fully paid;
48. "paid up", when applied to the capital stock of an insurer or to any shares thereof, means the capital stock or shares on which there remains no liability, actual or contingent, to the issuing insurer;
49. "pension fund association" means a company, corporation or association incorporated before the year 1910, under or by virtue of any law of the Province of Quebec, for the purpose of providing a pension for those persons who have contributed to a fund therefor during a certain number of years, and includes any auxiliary funds incorporated for the purpose of guaranteeing the repayment of any sum to those who contributed to such pension fund during a certain number of years, or for the purpose of assuring a life pension to those contributing a sum of money to such pension fund, or for these and similar purposes;
50. "plate glass insurance" means insurance (not being insurance incidental to some other class of insurance

defined by or under this Act) against loss of or damage to plate, sheet or window glass, whether in place or in transit;

51. "policy" means the instrument evidencing a contract; R.S.O. 1970, c. 224, s. 1, pars. 43-51.
52. "premium" means the single or periodical payment under a contract for insurance, and includes dues, assessments, administration fees paid for the administration or servicing of such contract, and other considerations; 1972, c. 66, s. 1 (3).
53. "premium note" means an instrument given as consideration for insurance whereby the maker undertakes to pay such sum or sums as may be legally demanded by the insurer, but the aggregate of which sums does not exceed an amount specified in the instrument;
54. "property" includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract;
55. "property damage insurance" means insurance against loss of or damage to property that is not included in or incidental to some other class of insurance defined by or under this Act;
56. "public liability insurance" means insurance against loss or damage to the person or property of others that is not included in or incidental to some other class of insurance defined by or under this Act;
57. "regulations" means the regulations made under this Act;
58. "salesman" means a person who is employed by a licensed insurance agent or broker on a stated salary that is not supplemented by commission, bonus or any other remuneration to solicit insurance or transact, for a person other than himself, an application for a policy of insurance, or to act in the negotiation of such insurance or in negotiating its continuance or renewal, or collects and receives premiums on behalf of his employer only, but does not include a licensed insurance agent, broker or

employee engaged solely in office duties for an agent or broker or a person acting under the authority of subsection 346 (15), (16) or (17);

59. "sick and funeral benefits" includes insurance against sickness, disability or death under which the moneys payable upon the happening of sickness, disability or death do not exceed the limits prescribed by section 325;
60. "sickness insurance" means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance;
61. "sprinkler leakage insurance" means insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures;
62. "Superintendent" means the Superintendent of Insurance, and includes the Deputy Superintendent of Insurance;
63. "theft insurance" means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery;
64. "title insurance" means insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument, or to any defect in such title or instrument;
65. "upon proof", as applied to any matter connected with the licensing of an insurer or other person, means upon proof to the satisfaction of the Superintendent;
66. "weather insurance" means insurance against loss or damage through windstorm, cyclone, tornado, rain, hail, flood or frost, but does not include hail insurance;
67. "workmen's compensation insurance" means insurance of an employer against the cost of compensation prescribed by statute for bodily injury, disability or death of a workman through accident or disease arising out of or in the course of his employment. R.S.O. 1970, c. 224, s. 1, pars. 53-67.

## PART I

## SUPERINTENDENT AND HIS DUTIES

**2.**—(1) A Superintendent of Insurance shall be appointed <sup>Superintendent</sup> who shall exercise the powers and perform the duties vested or imposed upon him by this or any other Act, shall have the general supervision of the business of insurance in Ontario and shall see that the laws relating to the conduct thereof are enforced and obeyed.

(2) The Superintendent may, with the consent of the <sup>Acting Superintendent</sup> Minister, designate a person in his office to act as Superintendent during the absence or inability of the Superintendent. R.S.O. 1970, c. 224, s. 2.

**3.** For the purposes of his duties and in the exercise of <sup>Evidence</sup> his powers under this Act or under any other Act relating to insurance, the Superintendent may require to be made and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses upon oath, and he has the same power to summon persons to attend as witnesses, and to enforce their attendance, and to compel them to produce books, documents and things, and to give evidence as any court has in civil cases. R.S.O. 1970, c. 224, s. 3.

**4.** An oath required by this Act to be taken may be <sup>Oaths</sup> administered and certified to by the Superintendent or by any person authorized to administer oaths in Ontario. R.S.O. 1970, c. 224, s. 4.

**5.** Neither the Superintendent nor any officer under him shall be interested as a shareholder, directly or indirectly, <sup>Independence of Superintendent and officers</sup> in any insurance company doing business in Ontario. R.S.O. 1970, c. 224, s. 5.

**6.**—(1) Without a fiat of the Attorney General, no action <sup>Actions against Superintendent</sup> or proceeding shall be brought or taken against the Superintendent for anything done or omitted in the performance or intended or supposed performance of his duty under this Act, or under any other Act that imposes duties upon him. R.S.O. 1970, c. 224, s. 6 (1); 1972, c. 1, s. 9 (7).

(2) The Superintendent may bring actions and institute <sup>Superintendent may bring actions, etc.</sup> proceedings in his name of office for the enforcement of any of the provisions of this Act or for the recovery of fees and penalties payable under this Act.

(3) No action or proceeding for the recovery of fees and <sup>Leave</sup> penalties payable under this Act shall be commenced without

the leave of the Superintendent. R.S.O. 1970, c. 224, s. 6 (2, 3).

Records of  
Super-  
intendent

7.—(1) The Superintendent shall keep the following books and records:

1. A register of all licences issued under this Act, in which shall appear the name of the insurer, the address of the head office, the address of the principal office in Canada, the name and address of the chief or general agent in Ontario, the number of the licence issued, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent considers necessary.
2. A record of all securities deposited by each insurer with the Minister, naming in detail the several securities, their par value, their date of maturity and value at which they are received as deposit.

Inspection

(2) The books and records required by this section to be kept shall be open to inspection at such times and upon payment of such fees as are prescribed by the regulations. R.S.O. 1970, c. 224, s. 7.

Annual  
publication  
in *The Ontario  
Gazette*,  
notice of  
licence

8.—(1) The Superintendent shall cause to be published in *The Ontario Gazette* in July of each year a list of the insurers licensed at the date of the list, and shall from time to time cause notice of the licence of an insurer not theretofore licensed and notice of suspension or cancellation or revivor of licence to be given by publication in *The Ontario Gazette*.

Certificate  
of Superin-  
tendent is  
evidence of  
licence, etc.

(2) A certificate under the hand and seal of office of the Superintendent that on a stated day an insurer mentioned therein was or was not licensed under this Act, or that any insurer was originally admitted to licence, or that the licence of any insurer was renewed, suspended, revived, revoked or cancelled on a stated day, is admissible in evidence as *prima facie* proof of the facts stated in the certificate.

Evidence,  
filing of  
documents

(3) A certificate of the filing of any document required by this Act or any predecessor thereof to be filed in the office of the Provincial Registrar or of the Superintendent is admissible in evidence as *prima facie* proof of the filing if signed or purporting to be signed by the Deputy or Assistant or by the acting Deputy or Assistant Provincial Registrar or by the Superintendent, as the case may be. R.S.O. 1970, c. 224, s. 8.

**9.** The duty of determining the right of any insurer in Ontario to be licensed under this Act devolves upon the Superintendent, subject to appeal as hereinafter provided, but nothing in this section affects the right of the Lieutenant Governor in Council or of the Minister to suspend or cancel any licence in the exercise of his authority under this Act. R.S.O. 1970, c. 224, s. 9.

Superintendent to determine right of insurer to be licensed

**10.**—(1) Every decision of the Superintendent upon an application for a licence shall be in writing and notice thereof shall be forthwith given to the insurer.

Decision of Superintendent

(2) The insurer, or any person interested, is entitled, upon payment of the prescribed fee, to a certified copy of the decision.

Certified copy

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer sworn before the Superintendent to faithfully report the same. R.S.O. 1970, c. 224, s. 10.

Stenographic report

**11.**—(1) An applicant for a licence under this Act or any person who considers himself aggrieved by a decision of the Superintendent may appeal therefrom to the Divisional Court in accordance with the rules of court.

Appeal

(2) The Superintendent shall certify to the Registrar of the Supreme Court the decision appealed from, his reasons therefor, and the documents, inspection reports and evidence, if any, and such other information as he had before him in making his decision. R.S.O. 1970, c. 224, s. 11 (1, 4), *revised*.

Certificate

**12.** The Superintendent may direct to an insurer any inquiry touching the contracts or financial affairs of the insurer, and the insurer shall make prompt and explicit answer to any such inquiry, and, in case of refusal or neglect to answer, is guilty of an offence. R.S.O. 1970, c. 224, s. 12.

Consequences of failure to answer inquiries

**13.** The Superintendent, or any person authorized under his hand or seal of office, shall, at all reasonable times, have access to all the books, securities and documents of an insurer, agent or broker that relate to contracts of insurance, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access is guilty of an offence. R.S.O. 1970, c. 224, s. 13.

Access to books

**14.**—(1) It is the duty of the officers and agents of a licensed insurer, and of persons licensed under this Act, or of any insured, to furnish the Superintendent on his

Duty to furnish information on request

request with full information relating to any contract of insurance issued by the insurer or to the insured or relative to any settlement or adjustment under any such contract. R.S.O. 1970, c. 224, s. 14 (1); 1973, c. 124, s. 1.

**Inspection**

(2) The Minister may, in his discretion, instruct the Superintendent to visit the head office or chief agency from which the contract was issued, or the office of the adjuster, and inquire into such contract or settlement, and section 13 applies with necessary modifications to such inquiry. R.S.O. 1970, c. 224, s. 14 (2).

**Annual inspection of insurers**

**15.**—(1) The Superintendent shall visit personally, or cause a duly qualified member of his staff to visit, at least annually, the head office or chief office in Ontario of every licensed insurer, other than a mutual benefit society having fewer than 300 members and an insurer as to which he adopts the inspection of some other government, and he shall examine the statements of the condition and affairs of each such insurer filed under this Act, and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its contracts as they mature and whether or not it has complied with all the provisions of this Act applicable to its transactions, and the Superintendent shall report thereon to the Minister as to all matters requiring his attention and decision.

**Examination of affairs of insurer**

(2) Where the head office of such an insurer is not in Ontario and the Superintendent considers it necessary and expedient to make a further examination into its affairs and so reports to the Minister, the Minister may, in his discretion, instruct the Superintendent to visit the head office of such insurer to inspect and examine its affairs and to make such further inquiries as the Minister may require.

**Duty of officers and agents**

(3) The officers and agents of such insurer shall cause the books and records of the insurer to be opened for the inspection of the Superintendent and shall otherwise facilitate such examination so far as it is in their power.

**Production of books at head office or as Superintendent directs**

(4) In order to facilitate the inspection of the books and records of an insurer, the insurer may be required by the Superintendent with the approval of the Minister, to produce the books and records at the head office or chief office in Ontario of the insurer or at such other convenient place as the Superintendent directs, and the officer or officers of the insurer who have custody of the books and records are entitled to be paid by the insurer for the actual expenses of such attendance.

(5) The Superintendent, with the approval of the Minister, may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets or liabilities of any such insurer and the cost thereof upon the certificate of the Superintendent approved by the Minister shall be paid by the insurer.

Examination  
of affairs of  
an insurer

(6) Where the office of an insurer at which an examination is made under this section is out of Ontario, the insurer shall pay the account in connection with such examination upon the certificate of the Superintendent approved by the Minister. R.S.O. 1970, c. 224, s. 15.

Expenses of  
examination

**16.**—(1) Where the head office of a licensed insurer is situate out of Ontario, notice or process in any action or proceeding in Ontario may be served upon the chief agent of the insurer in Ontario or, where no appointment of a chief agent is then in effect, upon the Superintendent and such service shall be deemed service upon the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association. R.S.O. 1970, c. 224, s. 16 (1); 1972, c. 66, s. 2.

Service of  
notice or  
process on  
chief  
agent or  
Super-  
intendent

(2) Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any such notice or process may be forwarded by the Superintendent and shall from time to time notify the Superintendent of any change in the address so filed.

Insurer to  
file address

(3) The Superintendent shall forthwith after the receipt of any such notice or process forward it to the insurer by registered mail addressed in the manner last notified to him for this purpose by the insurer. R.S.O. 1970, c. 224, s. 16 (2, 3).

Superin-  
tendent to  
forward  
notice or  
process

**17.**—(1) The Superintendent shall prepare for the Minister, from the statements filed by the insurers and from any inspection or inquiries made, an annual report, showing particulars of the business of each insurer as ascertained from such statement, inspection and inquiries, and such report shall be printed and published forthwith after completion.

Annual  
report

(2) In his annual report the Superintendent shall allow as assets only such of the investments of the several insurers as are authorized by this Act, or by their Acts or instruments of incorporation, or by the general Acts applicable to such investments.

Permissible  
investments

(3) In his annual report the Superintendent shall make all necessary corrections in the annual statements made by

Super-  
intendent's  
corrections  
of annual  
statements

all licensed insurers as provided in this Act, and he is at liberty to increase or diminish the liabilities of such insurers to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office thereof in Ontario, or otherwise.

Appraise-  
ment of real  
estate owned  
by insurer

(4) If it appears to the Superintendent, or if he has any reason to suppose, from the annual statements prepared and delivered to him by all insurers that the value placed by any insurer, incorporated and licensed in Ontario, upon the real estate owned by it or any parcel thereof is too great, he may either require such insurer to secure an appraisal of such real estate by one or more competent valuers, or may himself procure such appraisal at the expense of the insurer, and the appraised value, if it varies materially from the statement or return made by the insurer, may be substituted in the annual report of the Superintendent.

Appraise-  
ment of real  
estate held  
as security  
for loans

(5) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the amount secured by mortgage or hypothec upon any parcel of real estate, together with the interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest, he may procure an appraisal thereof and, if from the appraised value it appears that the parcel is not adequate security for the loan and interest, he may write off the loan and interest a sum sufficient to reduce the loan to such an amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report.

Appraise-  
ment of  
other  
investments

(6) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the value of any other investment of the funds of the insurer is less than the amount of the value of the investments shown in the books of the insurer, he may make or cause to be made an appraisal of the security, and, if from the appraised value it appears that the value of the security as shown on the books of the insurer is greater than its true value as shown by the appraisal, he may reduce the book value of the security to such amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report. R.S.O. 1970, c. 224, s. 17.

Publication  
by Super-  
intendent

**18.** The Superintendent may publish from time to time notices, reports, correspondence, results of hearings, decisions and any other matter considered by the Superintendent to be in the public interest. R.S.O. 1970, c. 224, s. 18.

**19.** Upon request by the Minister, the Superintendent shall prepare for the consideration of the Lieutenant Governor in Council a report upon the petition of an insurer, praying to have its bonds authorized by order in council for acceptance in lieu of personal or private suretyship pursuant to any Act of Ontario wherein or whereby the Lieutenant Governor in Council is empowered to authorize the giving or acceptance of securities or of the personal bonds of sureties, and in such report the Superintendent shall set out all material facts relating to the age, paid up capital, surplus of assets over liabilities, underwriting experience and generally such other information relating to the financial condition and standing of the insurer as, in his opinion, should govern the granting or refusal of the petition. Superintendent to report on petition for authorization of court bonds  
 R.S.O. 1970, c. 224, s. 19.

## PART II

### GENERAL PROVISIONS APPLICABLE TO INSURERS

**20.**—(1) This Part applies to insurance undertaken in Ontario and to all insurers carrying on business in Ontario. Application of Part

(2) An insurer undertaking a contract of insurance that under this Act is deemed to be made in Ontario, whether the contract is original or renewed, except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in Ontario within the meaning of this Part. Undertaking insurance

(3) An insurer undertaking insurance in Ontario or that in Ontario sets up or causes to be set up a sign containing the name of an insurer, or that in Ontario maintains or operates, either in its own name or in the name of its agent or other representative, an office for the transaction of the business of insurance either in or out of Ontario, or that in Ontario distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document, or that in Ontario makes or causes to be made any written or oral solicitation for insurance, or that in Ontario issues or delivers any policy of insurance or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, or that prosecutes or maintains in Ontario an Carrying on business

action or proceeding in respect of a contract of insurance, or a club, society or association incorporated or unincorporated that receives, either as trustees or otherwise, contributions or moneys from its members out of which gratuities or benefits are paid directly or indirectly upon the death of its members, or any of them, shall be deemed to be an insurer carrying on business in Ontario within the meaning of this Act. R.S.O. 1970, c. 224, s. 20.

## LICENCES

Necessity  
for licence

**21.**—(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Minister and hold a licence under this Act.

Prohibition

(2) Every insurer undertaking insurance or carrying on business in Ontario without having obtained a licence as required by this section is guilty of an offence.

Prohibition  
against  
person acting  
on behalf of  
unlicensed  
insurer

(3) A person who in Ontario does or causes to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer not licensed under this Act or who receives directly or indirectly any remuneration for so doing is guilty of an offence.

Exception

(4) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such:

R.S.O. 1980,  
c. 95

1. Pension fund societies or employees' mutual benefit societies incorporated under the *Corporations Act*.
2. Corporations mentioned in paragraphs 3 and 4 of section 296.
3. A trade union in Ontario that under the authority of its incorporating Act or charter has an assurance or benefit fund for the benefit of its own members exclusively.
4. Mutual benefit societies whose memberships are confined to railway employees and that do not grant mortuary or funeral benefits.

Unauthorized  
insurance

(5) An insurer incorporated and licensed by Ontario that carries on or solicits business in any foreign jurisdiction without being first authorized so to do under the laws of the foreign jurisdiction is guilty of an offence. R.S.O. 1970, c. 224, s. 21.

**22.** Nothing in this Act prevents a licensed insurer who has lawfully effected a contract of insurance in Ontario from reinsuring the risk or part thereof with an insurer transacting business out of Ontario and not licensed under this Act. R.S.O. 1970, c. 224, s. 22.

Reinsurance  
with  
unlicensed  
insurer

**23.**—(1) Upon due application and upon proof of compliance with this Act, the Minister may issue a licence to undertake contracts of insurance and carry on business in Ontario to any insurer coming within one of the following classes:

What  
insurers may  
be licensed

1. Joint stock insurance companies.
2. Mutual insurance corporations.
3. Cash-mutual insurance corporations.
4. Fraternal societies.
5. Mutual benefit societies.
6. Companies duly incorporated to undertake insurance contracts and not within classes 1 to 5.
7. Reciprocal or inter-insurance exchanges.
8. Underwriters or syndicates of underwriters operating on the plan known as Lloyds.
9. Pension fund associations.

(2) A licence issued under this Act authorizes the insurer named therein to exercise in Ontario all rights and powers reasonably incidental to the carrying on of the business of insurance named therein that are not inconsistent with this Act or with its Act or instrument of incorporation or organization. R.S.O. 1970, c. 224, s. 23.

Effect of  
licence

**24.**—(1) The Lieutenant Governor in Council may make regulations determining and defining classes of insurance for the purposes of this Act and of licences granted to insurers under this Act. R.S.O. 1970, c. 224, s. 24 (1).

Classes of  
insurance

(2) Subject to the provisions of the Parts of this Act that particularly relate to the classes of insurers mentioned in section 23, a licence may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 1 or as are prescribed by the regulations made under subsection (1) of this section. 1971, c. 84, s. 2.

Licence to  
carry on  
insurance  
business

Determina-  
tion of  
classes of  
insurance  
by Super-  
intendent

(3) For the purposes of this Act, the Superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance granted or that may be granted in respect thereto, and the policy form for the class of insurance to be used thereunder.

Limited or  
conditional  
licence

(4) Any licence may be issued subject to such limitations and conditions as the Minister may prescribe. R.S.O. 1970, c. 224, s. 24 (3, 4).

Conditions of  
automobile  
insurance  
licence

**25.**—(1) A licence to carry on automobile insurance in Ontario is subject to the following conditions:

1. In any action in Ontario against the licensed insurer or its insured arising out of an automobile accident in Ontario, the insurer shall appear and shall not set up any defence to a claim under a contract made outside Ontario, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in Ontario and such contract made outside Ontario shall be deemed to include the benefits set forth in Schedule C.
2. In any action in another province or territory of Canada against the licensed insurer, or its insured, arising out of an automobile accident in that province or territory, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in Ontario, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the other province or territory. R.S.O. 1970, c. 224, s. 25 (1); 1973, c. 124, s. 2.

Penalty for  
breach

(2) A licence may be cancelled when the holder commits a breach of condition as set out in subsection (1). R.S.O. 1970, c. 224, s. 25 (2).

Scope of life  
insurance  
licence

**26.** Every insurer licensed for the transaction of life insurance may, under the authority of its licence, unless the licence expressly provides otherwise,

- (a) include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and accidental death insurance; and

- (b) transact annuities of all kinds and insurance providing for the establishment of accumulation or endowment funds. R.S.O. 1970, c. 224, s. 26.

**27.**—(1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions prescribed by the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the regulations. R.S.O. 1970, c. 224, s. 27 (1).

Scope of  
insurance  
licence

(2) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within Part IV of this Act, but, in the case of a purely mutual fire insurance corporation, incorporated or licensed in Ontario and carrying on business on the premium note plan or under the Fire Mutuals Guarantee Fund, the automobile shall be specifically insured under a policy separate from that insuring other property. R.S.O. 1970, c. 224, s. 27 (2); 1975, c. 88, s. 1.

Insurance of  
automobiles

**28.**—(1) A licence shall not be granted to a joint stock insurance company not licensed before the 1st day of January, 1971 unless the company furnishes to the Superintendent satisfactory evidence that,

Capital  
requirements  
for licence

- (a) if the company is applying for a licence to transact the business of life insurance, the company has paid up capital and surplus of not less than \$2,000,000, or such greater amount as the Minister, in the circumstances may require, of which at least \$1,000,000 is paid up capital and at least \$500,000 is unimpaired surplus; and
- (b) if the company is applying for a licence to transact any class or classes of business other than life insurance, the company has paid up capital and surplus of not less than \$1,000,000, or such greater amount as the Minister in the circumstances may require, of which at least \$500,000 is paid up capital and at least \$250,000 is unimpaired surplus. R.S.O. 1970, c. 224, s. 28 (1).

Idem

(2) A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 23 (1), a reciprocal or inter-insurance exchange, or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, not licensed on the 30th day of June, 1971, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (1) for the paid in capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (1) for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein. R.S.O. 1970, c. 224, s. 28 (2); 1971, c. 84, s. 3; 1973, c. 124, s. 3.

Application  
of subs. (2)

(3) Subsection (2) does not apply to a purely mutual insurance corporation incorporated under the law of Ontario and insuring only risks other than mercantile and manufacturing on the premium note plan or under the Fire Mutuals Guarantee Fund. R.S.O. 1970, c. 224, s. 28 (3); 1975, c. 88, s. 2.

Application  
of other  
Parts

(4) A licence shall not be granted to an insurer except upon proof that it has complied with the provisions of this Act and the regulations applicable to it.

Licence for  
both fire  
and life

(5) A licence shall not be granted to an insurer for the transaction of both fire and life insurance unless it maintains separate and distinct accounts, funds and securities in respect of its business of life insurance, and those funds and securities are available only for the protection of the holders of its policies of life insurance and are not liable for the payment of claims arising from any other class of insurance that it undertakes, and it complies with such other requirements as the Superintendent may impose for the purposes of this subsection.

Evidence  
by insurer  
when head  
office is  
outside  
Ontario

(6) Where the head office of an applicant for a licence under this Act is situate out of Ontario, a licence shall not be granted except upon proof of its ability to provide for the payment at maturity of all its contracts, but the Superintendent may accept as sufficient the fact that it is licensed by any other government in Canada.

Licence of  
extra-  
provincial  
corporation

(7) A licence shall not be granted to a corporation that is incorporated under the law of a province other than Ontario unless its head office and chief place of business is situate in that province. R.S.O. 1970, c. 224, s. 28 (4-7).

**29.** The Superintendent may require such notice of the application for a licence to be given by publication in *The Ontario Gazette* and elsewhere as he considers necessary. R.S.O. 1970, c. 224, s. 29.

Information  
preliminary  
to licence

**30.**—(1) Before the issue of a licence to an insurer, such insurer shall file in the office of the Superintendent the following documents:

Documents  
to be filed by  
applicants  
for licence

1. A certified copy of its Act or other instrument of incorporation or association and of its constitution and by-laws and regulations verified in a manner satisfactory to the Superintendent.
2. A certified copy of its last balance sheet and auditor's report thereon.
3. If the head office of the insurer is out of Ontario, notice of the place where the chief office of the insurer in Ontario is to be situate.
4. If the head office of the insurer is out of Ontario, a power of attorney from the insurer to an agent resident in Ontario.
5. Copies of all policy forms and forms of application for insurance proposed to be used by the insurer in Ontario.
6. Any evidence or documents required by other Parts of this Act. R.S.O. 1970, c. 224, s. 30 (1); 1972, c. 66, s. 3.

(2) The applicant for a licence shall furnish such evidence as the Superintendent considers necessary that the requirements of this Act have been complied with and that the applicant is entitled to the licence applied for. R.S.O. 1970, c. 224, s. 30 (2).

Evidence

(3) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent. 1973, c. 124, s. 4.

Paying  
cost of  
examination

**31.** Every licensed insurer shall file in the office of the Superintendent certified copies of every amendment, revision or consolidation of its Act or other instrument of incorporation or association and of its constitution, by-laws and regulations verified in a manner satisfactory to the Super-

Filing of  
changes in  
by-laws, etc.

intendent within thirty days after the passing or adoption of the amendment, revision or consolidation. 1973, c. 124, s. 5.

Statement of  
expenses of  
organization

**32.**—(1) Upon application being made for a licence under this Act by an insurer incorporated after the 1st day of January, 1925 under any general or special Act of Ontario, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the insurer, and such statement shall, in addition, include a list of all unpaid liabilities, if any, in connection with or arising out of the incorporation and organization.

To what  
limited

(2) Until the licence is granted, no payments on account of expenses of incorporation and organization shall be made out of the moneys paid in by shareholders, except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expense of travel, if any.

Conditions  
precedent to  
issue of  
licence  
R.S.O. 1980,  
c. 95

(3) The Minister shall not issue the licence until he is satisfied that all the requirements of this Act and of the *Corporations Act* as to the subscriptions for shares in the capital of the insurer, the payment of money by shareholders on account of their subscriptions, the election of directors and other preliminaries have been complied with, and unless he is satisfied that the expenses of incorporation and organization, including any commission payable in connection with subscriptions for shares in the capital of the insurer, are reasonable. R.S.O. 1970, c. 224, s. 31.

Right to  
licence

**33.**—(1) An insurer that has applied for a licence and has complied with this Act and the *Corporations Act* is entitled to the licence. R.S.O. 1970, c. 224, s. 32.

Name of  
insurer

(2) The Minister may refuse to license an insurer where the name of the insurer is,

(a) the same as or similar to the name of another insurer and the assumption or use of the name in Ontario would be likely to deceive or mislead the public; or

(b) if the name of the insurer is objectionable on any public grounds. 1973, c. 124, s. 6.

Power of  
attorney of  
chief agent

**34.**—(1) Every licensed insurer that has its head office outside Ontario shall file with the Superintendent an executed copy of a power of attorney from the insurer to a chief agent resident in Ontario. 1973, c. 124, s. 7.

(2) The power of attorney shall be under the seal of the insurer, and shall be signed by the president and secretary or other proper officers of the insurer in the presence of a witness who shall make oath as to its due execution.

Execution  
of power of  
attorney

(3) The official positions held by the officers signing the power of attorney shall be verified by an oath of a person cognizant of the fact.

Authentica-  
tion

(4) The power of attorney shall declare at what place in Ontario the chief agency of the corporation is and shall expressly authorize the chief agent to receive service of process in all actions and proceedings against the insurer in Ontario for any liability incurred by the insurer therein, and also to receive from the Superintendent all notices that the law requires to be given, or that it is thought advisable to give, and shall declare that service of process for or in respect of such liability on the chief agent is legal and binding on the insurer.

Contents of  
power of  
attorney

(5) The power of attorney may confer upon the chief agent any further or other powers that the insurer considers advisable.

Authority  
conferred

(6) The production of a copy of the power of attorney certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person therein named to act on behalf of the insurer in the manner and for the purposes set forth in the certified copy.

Effect of  
copy as  
evidence

(7) Where the insurer changes its chief agent in Ontario, it shall, within seven days of the appointment, file with the Superintendent a similar power of attorney, stating the change and containing a similar declaration as to service of process and notices.

Changes in  
chief agent

(8) After the power of attorney is filed, any process in any action or proceeding against the insurer for liability incurred in Ontario may be validly served on the insurer upon its chief agent, but nothing in this section renders invalid service in any other modes in which the corporation may be lawfully served. 1972, c. 66, s. 4, *part*.

Service of  
process  
thereafter

**35.**—(1) Subject to section 335, the licence shall be in such form or forms for the different classes of insurers as may be from time to time determined by the Minister, and shall specify the business to be carried on by the insurer.

Form of  
licence

(2) The licence expires on the 30th day of June in each year, subject to renewal by the Superintendent on or before that date.

Term of  
licence

Conditions  
of licence

(3) Any licence may be issued or renewed subject to such limitations or conditions as the Minister considers appropriate.

Variation of  
licence

(4) Notwithstanding subsections (2) and (3), the Minister may at any time and in respect of any licence of an insurer,

- (a) reduce the term for which the licence was issued or renewed;
- (b) impose any conditions or limitations relating to the carrying on of the insurer's business that he considers appropriate; or
- (c) vary, amend or revoke any condition or limitation to which the licence is then subject,

but the Minister may not exercise any power granted under this subsection until he has given the insurer notice of his intention to exercise such power and has afforded the insurer a reasonable opportunity to be heard with respect thereto. R.S.O. 1970, c. 224, s. 33.

Failure  
to pay  
undisputed  
claim

**36.**—(1) Where written notice has been served on the Superintendent and upon proof of an undisputed claim arising from loss insured against in Ontario remaining unpaid for the space of sixty days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid, the Minister may suspend or cancel the licence.

Revival of  
licence

(2) The licence may be revived and the insurer may again transact business if, within six months after notice to the Superintendent of the failure of the insurer to pay an undisputed claim or the amount of a final judgment as provided in this section, such undisputed claim or final judgment upon or against the insurer in Ontario is paid and satisfied. R.S.O. 1970, c. 224, s. 34.

Failure to  
keep deposit  
unimpaired

**37.** When the insurer fails to keep unimpaired the deposit, if any, hereinafter required, the Minister may suspend or cancel the licence of the insurer. R.S.O. 1970, c. 224, s. 35.

Insufficiency  
of assets to  
be reported  
by Super-  
intendent

**38.**—(1) If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of an insurer are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in Ontario or that it has failed to comply with any provision of law or with its Act or instrument of incorporation or association, he shall so report to the Minister.

(2) If the Minister, after consideration of the report and after a reasonable time has been given to the insurer to be heard by him, and upon such further inquiry and investigation as he thinks proper to make, reports to the Lieutenant Governor in Council that he concurs in the report of the Superintendent, the Lieutenant Governor in Council may suspend or cancel the licence of the insurer. Suspension or cancellation

(3) Notice of such suspension or cancellation shall be published in *The Ontario Gazette* and elsewhere as the Minister directs and thereafter any person transacting business on behalf of the insurer except for winding-up purposes is guilty of an offence. Notice

(4) Where the Superintendent has reported as provided in subsection (1), the Minister or the Lieutenant Governor in Council may direct the issue of such modified, limited or conditional licence as is considered necessary for the protection of persons in Ontario who have effected or effect contracts of insurance with the insurer. Limited or conditional licence

(5) Upon the suspension or cancellation of the licence of an insurer by any government in Canada, the Superintendent may suspend or cancel the licence of such insurer under this Act. Application to licensees of any government in Canada R.S.O. 1970, c. 224, s. 36.

**39.**—(1) Where it comes to the attention of the Superintendent that an insurer incorporated or organized under the laws of Ontario may not be able to account satisfactorily for any assets that appear on its books and, upon investigation, the Superintendent is satisfied that any such assets cannot be satisfactorily accounted for and that the circumstances so warrant, he may immediately take possession and control of the assets of such insurer and maintain such control on his own initiative for a period of seven days and, with the concurrence of the Minister, for any longer period that the Minister may order for the purpose of his report under subsection 40 (1). Assets not accounted for

(2) The Superintendent may release any assets under his possession and control that he considers advisable for the purposes of the insurer. Release of assets R.S.O. 1970, c. 224, s. 37.

**40.**—(1) Where the Superintendent is of the opinion that the assets of an insurer incorporated or organized under the laws of Ontario are not sufficient to justify its continuance in business or to provide for its obligations under its policies he shall so report to the Minister. Report to Minister

Remedial  
powers of  
the Minister

(2) Where the Minister, after full consideration of the matter and after a reasonable time has been given to the insurer to be heard by him, and upon such further inquiry or investigation as he sees fit to make, agrees with the opinion of the Superintendent under subsection (1), the Minister may do one or both of the following,

- (a) make the insurer's licence subject to such limitations or conditions as he considers appropriate;
- (b) prescribe a time within which the insurer shall make good any deficiency of assets.

Subsequent  
action

(3) If the insurer fails to make good any deficiency of assets within the time that has been prescribed under clause (2) (b), or any extension thereof subsequently given by the Minister, the Minister shall submit the report of the Superintendent to the Lieutenant Governor in Council and the Lieutenant Governor in Council, if the Lieutenant Governor in Council agrees with the report, may order the Superintendent to take possession and control of the assets of the insurer and the Superintendent shall deliver a copy of the order to an officer of the insurer.

Appointment  
of appraisers

(4) For the purposes of this section, the Minister may appoint such persons as he considers necessary to value and appraise the assets and liabilities of the insurer and report upon its condition and its ability, or otherwise, to meet its liabilities. R.S.O. 1970, c. 224, s. 38.

Power of  
Superin-  
tendent  
upon taking  
control

41.—(1) If so ordered by the Lieutenant Governor in Council under section 40, the Superintendent shall take possession and control of the assets of the insurer and shall thereafter conduct its business and take such steps as in his opinion should be taken towards its rehabilitation, and for such purposes the Superintendent has all the powers of the board of directors of the insurer, and, without limiting the generality of the foregoing, the Superintendent may,

- (a) exclude the directors, officers, servants and agents of the insurer from the premises, property and business of the insurer; and
- (b) carry on, manage and conduct the operations of the insurer and in the name of the insurer preserve, maintain, realize, dispose of and add to the property of the insurer, receive the incomes and revenues of the insurer and exercise all the powers of the insurer.

(2) While the Superintendent has possession and control of the assets of an insurer under this section, the Minister may direct the Superintendent to apply to the court for an order for the winding up of the insurer under Part VI of the *Corporations Act*.

Application  
to court

R.S.O. 1980,  
c. 95

(3) Where the Superintendent is in possession and control of the assets of an insurer and is conducting its business, he may appoint one or more persons to manage and operate the business of the insurer and,

Appointment  
of managers

- (a) each person so appointed is a representative of the Superintendent; and
- (b) the remuneration of any such person, other than an employee of the office of the Superintendent, shall be fixed by the Minister.

(4) Whenever the Minister believes that an insurer whose assets are in the possession and control of the Superintendent meets all the requirements of this Act and that it is otherwise proper for the insurer to resume possession and control of its assets and the conduct of its business, the Minister may, in writing, direct the Superintendent to relinquish to the insurer the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Relinquish-  
ing control

(5) If the Minister, on the report of the Superintendent, considers that further efforts to rehabilitate an insurer whose assets are in the possession and control of the Superintendent would be futile, he may, in writing, direct the Superintendent to relinquish to the insurer the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Where  
rehabilita-  
tion efforts  
futile

(6) The expenses of the Superintendent incurred in rehabilitation proceedings under this section and sections 39 and 40 shall be paid by all insurers licensed under this Act to carry on business of the same class or classes as the insurer who is the subject of the proceedings, and the share of each shall be the proportion of the expenses that the net premium income received from the insurer's policyholders in Ontario in its last preceding fiscal year bears to the total net premium income received from the policyholders in Ontario by all insurers of that class in their respective last preceding fiscal years.

Expenses of  
proceedings

Advisory  
committee

(7) The insurers required to bear the said expenses of the Superintendent may appoint a committee of not more than six members to advise the Superintendent in respect of all matters pertinent to the rehabilitation of the insurer whose assets are in the possession and control of the Superintendent. R.S.O. 1970, c. 224, s. 39.

Appeal

42.—(1) Notwithstanding section 41, an insurer may appeal to the Divisional Court in accordance with the rules of court, from any order made by the Lieutenant Governor in Council under section 40 within thirty days after the delivery of a copy of the order to an officer of the insurer.

Stay

(2) An order of the Lieutenant Governor in Council under section 40 shall take effect immediately, but where there is an appeal, a judge of the Divisional Court may grant a stay until any appeal is disposed of.

Material  
on appeal

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Lieutenant Governor in Council;
- (b) the reports of the Superintendent to the Minister or the Lieutenant Governor in Council;
- (c) the record of any hearing; and
- (d) all written submissions by the appellant to the Superintendent, the Minister or the Lieutenant Governor in Council.

Representa-  
tion

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Order

(5) Where an appeal is taken under this section, the court may by order direct the Superintendent to take such action as the court considers proper or refrain from taking any action specified in the order and the Superintendent shall act accordingly.

Further  
decision

(6) Notwithstanding the determination of the appeal under this section, the Minister and the Lieutenant Governor in Council have power to make any further reports and orders on new material or where there is a material change in the circumstances, and any such further order is subject to appeal under this section. R.S.O. 1970, c. 224, s. 40, *revised*.

**43.** Where the licence of an insurer is suspended or cancelled under this Act, it may be revived if the insurer makes good the deposit, or the deficiency, as the case may be, to the satisfaction of the Minister. R.S.O. 1970, c. 224, s. 41. Revival of licence

**44.** It is the duty of the Superintendent to report to the Minister any contravention of this Act by any insurer licensed thereunder, and thereupon the Minister may, in his discretion, suspend or cancel or refuse to renew the insurer's licence. R.S.O. 1970, c. 224, s. 42. Report on contravention of Act

#### DEPOSITS

**45.**—(1) Subject to subsections (2), (3) and (4), "insurer" in sections 46 to 78 shall be deemed to include only joint stock insurance companies, cash-mutual insurance corporations, insurance companies mentioned in paragraph 6 of subsection 23 (1), insurers that undertake life insurance except fraternal societies, and underwriters or syndicates of underwriters operating on the plan known as Lloyds. Meaning of "insurer" in sections 46 to 78

(2) Sections 46 to 50 do not apply to an insurer maintaining a reciprocal deposit with the government of another province under sections 73 to 78 or expressly exempted by order of the Lieutenant Governor in Council. Application to Canada registrants

(3) Sections 46 to 78 do not apply to an insurer in respect of its business of marine insurance. Application of ss. 46 to 78

(4) Sections 46 to 78 do not apply to an underwriter or syndicate of underwriters that is a member of the society known as Lloyds, incorporated by the Imperial Statute, *Lloyds Act, 1871*. Application to Lloyds

(5) In sections 46 to 78, "approved securities" means securities of or guaranteed by Canada or by any province of Canada, securities of an incorporated municipality of Canada, and such other securities as are authorized for the investment of trust funds under the law of the province in which they are offered for deposit and approved by the superintendent of insurance of the provinces of Canada in which the insurer is carrying on business. R.S.O. 1970, c. 224, s. 43. Interpretation

**46.**—(1) Every insurer carrying on the business of insurance in Ontario shall, before receiving a licence under this Act, deposit approved securities with the Minister in the following amounts: Amount of deposit

1. Where the insurer undertakes life insurance—\$50,000.

2. Where the insurer undertakes any one or more classes of insurance other than life,

i. in Ontario only—\$25,000.

ii. in Ontario and elsewhere—\$50,000.

Increase  
in amount  
of deposit

(2) The Superintendent may require the deposit referred to in subsection (1) to be increased, either before or after granting the licence, to such amount as he considers necessary and for this purpose the Minister may require a reinsurer that reinsures all or part of the insurer's business to deposit balances owing to the insurer with the Minister.

Excess  
deposit

(3) An insurer may voluntarily make a deposit in excess of the amount prescribed by this section, but no part of a voluntary deposit shall be withdrawn without the sanction of the Minister. R.S.O. 1970, c. 224, s. 44.

Value  
at which  
securities  
received

47.—(1) The value of such securities shall be estimated at their market value, not exceeding par, at the time they are deposited.

Other  
securities

(2) If any other than approved securities are offered as a deposit, the Minister may accept them on such valuation and on such conditions as he considers proper.

Further  
deposit if  
below  
market  
value

(3) If the market value of any securities that have been deposited by an insurer declines below that at which they were deposited, the Minister may notify the insurer to make such further deposit as will ensure the accepted value of all the securities deposited by the insurer being equal to the amount that is required by this Act to be deposited.

Failure to  
make further  
deposit

(4) On failure by the insurer to make such further deposit within sixty days after being called upon so to do, the Minister may suspend or cancel the licence of the insurer.

Title to  
securities

(5) The property in any stock, bonds or debentures deposited with the Minister under this Act or any predecessor thereof is vested in the Minister by virtue of his office without any formal transfer while such stock, bonds or debentures form the whole or any part of the deposit required by this Act.

Interest  
upon  
deposits

(6) So long as the conditions of this Act are satisfied and no notice of any final judgment against the insurer or order for its winding up or for the distribution of its assets or for administration of its deposit is given to the Minister, the insurer is entitled to receive the interest upon the securities forming the deposit. R.S.O. 1970, c. 224, s. 45.

48. Where an insurer desires to substitute other approved securities for securities deposited, the Minister may permit the substitution to be made. R.S.O. 1970, c. 224, s. 46. Substitution  
of securities

49.—(1) Where it is made to appear that an insurer, having made a deposit with the Minister, has made a deposit with any other government in Canada, the insurer is entitled, with the sanction of the Lieutenant Governor in Council, to withdraw the deposit with the Minister. Withdrawal  
of deposit in  
certain cases

(2) If at any time it appears that an insurer has on deposit with the Minister under this Act a sum in excess of the prescribed amount, the Minister, upon being satisfied that the interest of persons effecting contracts of insurance with the insurer in Ontario will not be prejudiced thereby, and upon giving such notice in *The Ontario Gazette* and taking such other precautions as he considers expedient, may authorize the withdrawal of the amount of such excess or such portion thereof as he considers advisable, but the Minister may authorize such withdrawal without giving notice. R.S.O. 1970, c. 224, s. 47. Withdrawal  
of excess  
deposit

50.—(1) An insurer that has ceased to transact business in Ontario and desires to obtain a return of its deposit may give written notice to that effect to the Superintendent, and shall publish in *The Ontario Gazette* a notice that it has applied to the Lieutenant Governor in Council for the return of its deposit, calling upon all claimants, contingent or actual, who object to the return to file their objections with the Superintendent on or before a day named in the notice, which shall not be less than three months after the first publication of it. Return of  
deposit on  
ceasing to do  
business

(2) Upon giving the notice to the Superintendent, the insurer shall file with him a list of all its outstanding contracts of insurance, including contracts in respect of which claims have accrued. Filing list of  
outstanding  
contracts

(3) After the day named in the notice, if the Minister is satisfied that the insurer has obtained a discharge of all such outstanding contracts, the Lieutenant Governor in Council may direct that the deposit be returned. Return of  
deposit on  
proof of  
discharge of  
contracts

(4) If the Minister is not satisfied that all such contracts have been discharged, the Lieutenant Governor in Council may direct that a sufficient amount be retained to meet the contracts unprovided for and that the remainder of the deposit be returned, and thereafter, from time to time as such contracts lapse or proof is adduced that they have been satisfied, further return of the deposit may be directed by the Lieutenant Governor in Council. R.S.O. 1970, c. 224, s. 48. Return of  
part of  
deposit

Interpre-  
tation

**51.** In sections 52 to 78,

1. "insured person" means a person who enters into a subsisting contract of insurance with an insurer and includes,
  - (a) a person insured by a contract whether named or not; and
  - (b) a person to whom or for whose benefit all or part of the proceeds of a contract of insurance is payable; and
  - (c) a person entitled to have insurance money applied toward satisfaction of his judgment in accordance with section 227;
2. "loss" includes the happening of an event or contingency by reason of which a person becomes entitled to a payment under a contract of insurance of money other than a refund of unearned premiums;
3. "Ontario contract" means a subsisting contract of insurance that,
  - (a) has for its subject,
    - (i) property that at the time of the making of the contract is in Ontario or is in transit to or from Ontario, or
    - (ii) the life, safety, fidelity or insurable interest of a person who at the time of the making of the contract is resident in Ontario or of an incorporated company that has its head office in Ontario; or
  - (b) makes provision for payment thereunder primarily to a resident of Ontario or to an incorporated company that has its head office in Ontario;
4. "reciprocal deposit" means a deposit of an insurer held pursuant to section 74 or 75;
5. "reciprocating province" means a province that has been declared to be a reciprocating province under paragraph 1 of subsection 74 (1) or subsection 75 (1) with respect to the deposit of a particular insurer. R.S.O. 1970, c. 224, s. 49.

**52.**—(1) Notwithstanding anything hereinafter contained but subject to subsection (2), at any time before the granting of an order for administration of a deposit and upon the recommendation of the Superintendent certifying that such action is necessary or desirable for the protection of policy-holders entitled to share in the proceeds of the deposit, the Minister may use all or any part of the deposit for the purpose of reinsuring all or any part of the Ontario contracts.

Deposit  
may be used  
to reinsure  
Ontario  
contracts

(2) A reciprocal deposit may be used for purposes of reinsurance in the manner and to the extent agreed upon by the superintendents of insurance of the reciprocating provinces and not otherwise. R.S.O. 1970, c. 224, s. 50.

Consent  
required  
in case of  
reciprocal  
deposit

**53.**—(1) The deposit made by an insurer under this Act is subject to administration in the manner hereinafter provided.

Administra-  
tion of  
deposit

(2) Subject to sections 74 and 75, the deposit shall be held and administered for the benefit of all insured persons under Ontario contracts and they are entitled to share in the proceeds of the deposit.

Persons  
for whom  
deposit  
administered

(3) An insured person under an Ontario contract is entitled to share in the proceeds of the deposit in respect of,

Claims  
entitling  
insured to  
share in  
deposit

(a) a claim for a loss that is covered by the contract and that occurred before the termination date fixed under section 58 of this Act or section 220 of the *Corporations Act*; or

R.S.O. 1980,  
c. 95

(b) a claim for refund of unearned premiums, except in the case of life insurance; or

(c) a claim for payment of the legal reserve in respect of the contract in the case of life insurance; or

(d) claims under both clauses (a) and (b). R.S.O. 1970, c. 224, s. 51.

**54.**—(1) An application for administration of a deposit shall be made by originating notice of motion to a judge of the Supreme Court.

Application  
for admin-  
istration of  
deposit

(2) The application shall be made in the county or district,

Where  
application  
to be made

(a) in which the head office of the insurer is situate;  
or

- (b) in which the chief office of the insurer in Ontario is situate if its head office is out of Ontario. R.S.O. 1970, c. 224, s. 52.

Application  
by Super-  
intendent

**55.**—(1) With the approval of the Minister, the Superintendent may make application for administration at any time when, in his opinion, it is necessary or desirable for the protection of the insured person entitled to share in the proceeds of the deposit.

Idem

(2) In the case of a reciprocal deposit held in Ontario, the superintendent of insurance of a reciprocating province may make application for administration of the deposit.

Application  
by insured  
persons

(3) An insured person entitled to share in the proceeds of a deposit may make application for administration of the deposit upon producing evidence,

(a) that he has served the Superintendent with a notice in writing of his intention to make application if the Superintendent or the superintendent of insurance of a reciprocating province does not apply; and

(b) that sixty days have elapsed since the service of the notice and that no application for administration of the deposit has been made.

Duty of  
Superinten-  
dent in case  
of reciprocal  
deposit

(4) In the case of a reciprocal deposit, if the Superintendent is served with a notice as provided in subsection (3), he shall forthwith notify the superintendent of insurance of each reciprocating province that he has been so served. R.S.O. 1970, c. 224, s. 53.

Service of  
notice of  
motion

**56.**—(1) The applicant for administration of the deposit shall serve the originating notice of motion at least ten days before the date specified in the notice for the making of the application,

(a) upon the insurer or, where the insurer is in liquidation, upon the liquidator of the insurer; and

(b) upon the Superintendent; and

(c) in the case of a reciprocal deposit, upon the superintendent of insurance of each reciprocating province.

Order for  
administra-  
tion

(2) An applicant for administration is entitled to an order for administration upon proof,

- (a) that the licence of the insurer has been cancelled, and that its assets are insufficient to discharge its outstanding liabilities; or
- (b) that an order has been made for the winding up of the insurer; or
- (c) that the insurer has failed to pay,
  - (i) an undisputed claim for sixty days after it has been admitted, or
  - (ii) a disputed claim after final judgment and tender of a valid discharge,

if the claim arose under a contract of insurance in respect of which the deposit is subject to administration. R.S.O. 1970, c. 224, s. 54.

**57.**—(1) Upon granting an order for administration, the court shall appoint a receiver to administer the deposit. Receiver, appointment

(2) Where a provisional liquidator or a liquidator has been appointed under this Act or the *Corporations Act* or a liquidator has been appointed under the *Winding-up Act* (Canada) to wind up a company that has made a deposit under this Act, the court may appoint the provisional liquidator or liquidator as the receiver to administer the deposit. Provisional liquidator, appointment  
R.S.O. 1980, c. 95  
R.S.C. 1970, c. W-10

(3) Thereupon the provisional liquidator or the liquidator shall administer the deposit for the benefit of the insured persons entitled to share in the proceeds thereof in accordance with the provisions of and the priorities set out in this Act. R.S.O. 1970, c. 224, s. 55. Deposit, how to be administered

**58.**—(1) Where a termination date has not been fixed by a provisional liquidator or a liquidator under section 220 of the *Corporations Act*, forthwith after his appointment, the receiver shall fix a termination date for the subsisting contracts of insurance of the insurer, and on and after that date coverage and protection under the Ontario contracts cease and determine and the insurer is not liable under any such contract for a loss that occurs after that date. Termination date

(2) Where a receiver administering a reciprocal deposit held in another province for the benefit of the insured persons under Ontario contracts fixes a termination date for the subsisting contracts of insurance of the insurer, on and after Termination of Ontario contracts on date fixed by receiver in another province

that date coverage and protection under the Ontario contracts cease and the insurer is not liable under any such contract for a loss that occurs after that date.

When  
termination  
date to be  
fixed

(3) The termination date shall not be less than twenty and not more than forty-five days after the date upon which the receiver was appointed.

Notice of  
termination  
date

(4) The receiver shall forthwith give notice in writing of the termination date to the Superintendent and, in the case of a reciprocal deposit, to the superintendent of insurance of each reciprocating province.

Publication  
of notice

(5) The receiver shall forthwith publish notice of the termination date in *The Ontario Gazette* and in the official gazette of each reciprocating province and in such newspapers circulating in those provinces as the receiver in his opinion considers advisable in order to give reasonable notice of the termination date. R.S.O. 1970, c. 224, s. 56.

Notice to  
insured  
persons  
under  
Ontario  
contracts

**59.**—(1) The Superintendent, upon receiving notice of a termination date fixed by the receiver administering the deposit of an insurer, shall forthwith take such action as he considers advisable in the interests of the insured persons under Ontario contracts to give notice of that date to them as soon as is reasonably possible.

List of  
insured  
persons

(2) Without restricting the generality of subsection (1), the Superintendent may forthwith require each agent of the insurer in Ontario to forward to him a list showing the name and address of each person who has entered into a contract of insurance with the insurer of whom the agent has a record.

Notice to  
persons  
on list

(3) On receipt of each list forwarded by an agent, the Superintendent may send by ordinary mail to each person whose name appears on the list a notice containing,

- (a) the termination date fixed by the receiver;
- (b) the name and address of the receiver to whom particulars of claims for loss and claims for refund of unearned premiums should be submitted; and
- (c) such other information as the Superintendent considers advisable.

Publication  
of contents  
of notice

(4) The Superintendent in his discretion may publish, broadcast or otherwise communicate or distribute the information contained in the notice, either generally or in any

particular area or case, in such manner and by such means as he considers best suited to convey the information to the insured persons as soon as is reasonably possible having regard to all the circumstances. R.S.O. 1970, c. 224, s. 57.

**60.** Forthwith after his appointment, the receiver shall,

Duty of  
receiver on  
appointment

- (a) call either upon the insurer or its agent or liquidator to furnish a list of all insured persons who are entitled to share in the proceeds of the deposit; and
- (b) call upon all insured persons who are entitled to share in the proceeds of the deposit to file their claims if they have not already done so. R.S.O. 1970, c. 224, s. 58.

**61.** The court, by the order appointing a receiver or by any subsequent order, may authorize the receiver to exercise in respect of the accounts of the insurer, all or any of the powers that the Master of the Supreme Court would have if he were taking an account of the claims against the deposit, and every receiver so authorized has those powers as well as all other powers enjoyed by a receiver appointed under an order of the court. R.S.O. 1970, c. 224, s. 59.

Powers of  
Master of  
Supreme  
Court  
exercisable  
by receiver

**62.—**(1) The receiver may apply to the court from time to time for an order authorizing him,

Application  
by receiver  
for order  
for sale of  
securities

- (a) to sell or realize upon all or part of the securities comprised in the deposit of the insurer; and
- (b) to pay from the proceeds thereof the costs of the administration of the deposit, including salaries of office staff, office expenses, the fee for the services of the receiver, fees and disbursements to adjusters and solicitors, and such other costs and expenses as the court considers proper.

(2) The court may require the receiver to give such notice of the application in such manner as the court directs.

Notice of  
application

(3) After hearing the application, the court may make the order and may require the receiver to comply with such conditions as the court directs. R.S.O. 1970, c. 224, s. 60.

Making of  
order

**63.** The proceeds of the deposit are payable,

Priorities  
in payment  
of proceeds  
of deposit

- (a) first, in payment of the receiver and of all costs and expenses incurred by him in the administration

R.S.O. 1980,  
c. 95

of the deposit and in payment of the remuneration, costs and expenses of the provisional liquidator as ordered by the Minister under section 216 of the *Corporations Act*;

- (b) second, in payment of the insured persons who are entitled to share in the proceeds of the deposit in accordance with the priorities set out in section 64. R.S.O. 1970, c. 224, s. 61.

Priority of  
loss claims

**64.**—(1) Except in the case of life insurance, each insured person who claims in respect of a loss covered by the contract that occurred before the termination date fixed under section 58 of this Act or section 220 of the *Corporations Act* is entitled to receive payment of his approved or settled claim in full in priority to the insured persons who claim in respect of refunds of unearned premiums.

Priority of  
unearned  
premium  
claims

(2) Subject to subsection (1), an insured person who claims in respect of a refund of unearned premiums may claim such part of the premium paid as is proportionate to the period of his contract unexpired,

- (a) at the termination date fixed by the receiver under section 58 of this Act or fixed by the provisional liquidator or the liquidator under section 220 of the *Corporations Act*; or

- (b) at the date the insured person cancelled the contract,

whichever is the earlier date.

Priority of  
life insurance  
claims

(3) In the case of life insurance, each insured person who has a claim for a loss covered by the contract that occurred before the termination date fixed under section 58 of this Act or section 220 of the *Corporations Act* ranks in the distribution of the proceeds of the deposit for the approved or settled amount of the claim *pari passu* with insured persons under unmatured life insurance contracts.

Claim under  
unmatured  
life policy

(4) An insured person under an unmatured life insurance contract is entitled to the full amount of the legal reserve in respect of his contract determined by the receiver according to the valuation thereof approved by the Superintendent under this Act. R.S.O. 1970, c. 224, s. 62.

Action of  
receiver  
on receipt  
of claims

**65.**—(1) Where an insured person has filed a claim for a loss covered by the contract that occurred before the termination date fixed under section 58 of this Act or section 220

of the *Corporations Act*, the receiver shall inquire into the claim and, R.S.O. 1980,  
c. 95

- (a) may approve the claim, if a final judgment has been obtained against the insurer in respect thereof; or
- (b) may approve the claim, if it has been adjusted or settled by the insurer or by the receiver at an amount that in his opinion the claimant is reasonably entitled to receive; or
- (c) may refuse to approve the claim or the amount thereof.

(2) An appeal lies to the Divisional Court from any decision of the receiver, if taken within thirty days from the date on which the person appealing received notice of the decision. Appeal from receiver

(3) Notice of the appeal shall be served on the receiver, and the court may summarily determine the matter or may direct an issue to be tried or may make such other order as the court considers proper. Manner of appeal R.S.O. 1970, c. 224, s. 63.

**66.**—(1) The receiver shall prepare a list showing the names of the persons who appear by the books and records of the insurer or otherwise to be entitled to share in the proceeds of the deposit. List of persons entitled to share in deposit

(2) The receiver shall prepare and attach to the list a schedule of approved claims for losses of persons whose names appear on the list showing in respect of each approved claim, Schedule of approved claims for losses

- (a) the name and address of the claimant;
- (b) the particulars of the contract of insurance upon which the claim is based;
- (c) whether the claim was reduced to judgment or was adjusted or settled; and
- (d) the amount to which the claimant is entitled.

(3) The receiver shall prepare and attach to the list a schedule of unapproved claims for losses of persons whose names appear on the list showing in respect of each claim, Schedule of unapproved claims for losses

- (a) the name and address of the claimant;

- (b) the particulars of the contract of insurance upon which the claim is based;
- (c) the amount for which the claim is made or the amount estimated by the receiver as the probable maximum amount that will be payable under the contract in respect of that loss.

Schedule of  
unearned  
premiums

(4) Except in the case of life insurance, the receiver shall prepare and attach to the list a schedule of unearned premiums refundable showing in respect of each person whose name appears on the list and who is entitled to a refund,

- (a) his name and address;
- (b) the particulars of the contract of insurance in respect of which the unearned premium is refundable;
- (c) the date on which the policy was terminated either by the receiver under section 58 of this Act or by the provisional liquidator or the liquidator under section 220 of the *Corporations Act*, or was cancelled by the insured person; and
- (d) the amount of the unearned premium as calculated by the receiver under subsection 64 (2).

R.S.O. 1980,  
c. 95

Schedule  
of legal  
reserves on  
life policies

(5) In the case of life insurance, the receiver shall prepare and attach to the list a schedule of contract legal reserves showing in respect of each person whose name appears on the list and who is entitled to claim for the legal reserve in respect of his contract,

- (a) his name and address;
- (b) the particulars of the contract of insurance in respect of which the legal reserve is payable; and
- (c) the amount of the legal reserve calculated by the receiver under subsection 64 (4). R.S.O. 1970, c. 224, s. 64.

Application  
for order  
for payment  
on account  
of claims

**67.**—(1) Upon completion of the schedules and after having paid or provided reasonable reserves out of the deposit to pay the amounts payable under clause 63 (a), the receiver may apply to the court for an order authorizing the payment of such aggregate sum as may be fixed by the court on account of the amounts payable under clause 63 (b).

(2) Except in the case of life insurance, the receiver shall divide the sum mentioned in subsection (1) so as to provide for payment of the claims for losses in full or, if the sum is inadequate, *pro rata* on account of, <sup>Provision for payment of claims</sup>

- (a) the approved claims for losses set out in the schedule of approved claims for losses; and
- (b) the unapproved claims for losses set out in the schedule of unapproved claims for losses,

and shall distribute the part referred to in clause (a) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the part referred to in clause (b) for distribution from time to time as the unapproved claims are approved.

(3) Except in the case of life insurance, if there appears to be a surplus remaining after the receiver has paid or retained a sum that, in his opinion, is reasonably adequate to pay in full all claims for losses referred to in subsection (2), the receiver shall divide the surplus so as to provide for payment of all unearned premiums in full or, if it is inadequate, among the persons entitled to a refund of unearned premiums in proportion to the amounts payable as set out in the schedule of unearned premiums refundable. <sup>Payment of unearned premiums</sup>

(4) In the case of life insurance, the receiver shall divide the sum fixed under subsection (1) so as to provide for payment of the following amounts in full or, if the sum is inadequate, *pro rata* on account of, <sup>Payment of claims in case of life insurance</sup>

- (a) the approved claims for losses set out in the schedule of approved claims for losses;
- (b) the unapproved claims for losses set out in the schedule of unapproved claims for losses;
- (c) the full amount of the legal reserve in respect of each unmaturing life insurance contract as set out in the schedule of contract legal reserves,

and shall distribute the parts referred to in clauses (a) and (c) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the part referred to in clause (b) for distribution from time to time as the unapproved claims are approved. R.S.O. 1970, c. 224, s. 65.

**68.** If a claim in respect of a loss that occurred before the termination date is filed after the receiver has applied to the court under subsection 67 (1) and before the final order of the court <sup>Payment of delayed claims</sup>

discharging the receiver, the claimant is entitled to share in the distribution of the moneys remaining in the hands of the receiver upon proof of his claim and upon such terms and conditions as the court may direct. R.S.O. 1970, c. 224, s. 66.

Application  
to court for  
direction

**69.** The receiver administering a deposit may apply to the court at any time on summary application for directions or advice pertaining to any matter arising in the administration of the deposit. R.S.O. 1970, c. 224, s. 67.

Submission  
by receiver  
of final  
accounts

**70.** Upon the completion of the distribution of the proceeds of the deposit, the receiver shall submit his final accounts to the court and the court, on the passing thereof, may make an order approving the accounts and discharging the receiver. R.S.O. 1970, c. 224, s. 68.

Claims  
remaining  
unpaid after  
distribution  
of deposit

**71.** If a claim is made after the completion of the distribution of the proceeds of the deposit and the discharge of the receiver or if there is a claim against the insurer by an insured person not fully paid by the distribution of the proceeds of the deposit, the claimant is not barred from any recourse he may have against the insurer, and his claim is a first lien or charge on the assets of the insurer in winding up as provided in subsection 218 (2) of the *Corporations Act*. R.S.O. 1970, c. 224, s. 69.

R.S.O. 1980,  
c. 95

Certain  
persons  
not entitled  
to share in  
proceeds of  
deposit

**72.** A person who holds security for his claim under a contract of insurance, or who is entitled to share in the administration of a fund deposited with the government of any other province for the protection of persons resident in that province, is only entitled to share in the administration of the Ontario deposit if he abandons such special security and releases his claim upon any other government deposit. R.S.O. 1970, c. 224, s. 70.

Interpre-  
tation

**73.**—(1) In sections 74 and 75, the expression “contracts”, in relation to any other province of Canada, has the meaning assigned to it by the Act of that province under which insurers are licensed to carry on the business of insurance.

Application  
of ss. 74, 75

(2) This section and sections 74 and 75 are applicable notwithstanding that the insurer is or may become licensed in one province for classes of insurance different from those for which it is or may become licensed in another province.

Conflict

(3) Sections 74 and 75 prevail over any other provisions of this Act to the extent that they are inconsistent with such other provisions. R.S.O. 1970, c. 224, s. 71.

74.—(1) Where an insurer has its head office for Canada in Ontario and makes a deposit under this Act for the purposes of this section by virtue whereof the insurer will not be required to make a deposit in another province in which it is or may become licensed to undertake insurance, the following provisions are in effect:

1. The amount of the deposit to be made and maintained by the insurer shall be fixed by order of the Lieutenant Governor in Council and the order shall declare what provinces are reciprocating provinces with respect to that insurer's deposit. Order prescribing amount of deposit and reciprocating provinces
2. The deposit shall be held and administered as security *pari passu* for the Ontario contracts of the insurer and for its contracts in any reciprocating province. Deposit as security for contracts
3. The Minister shall, upon the request of the official who issues or proposes to issue a licence to the insurer in another province, certify under his hand that the deposit is held in the manner provided by paragraph 2, and the Superintendent shall forward the certificate to that official and a copy to the superintendent of insurance in each province. Certificate of Superintendent as to deposit
4. Where, with respect to the outstanding contracts of the insurer, it appears to the Superintendent from the annual statement under section 81 or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, or where it appears to the superintendent of insurance for another province in which the insurer is licensed from any annual report made to him by the insurer or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary and such superintendent requests the Superintendent to obtain a further deposit, the insurer shall forthwith deposit such further sum as the Lieutenant Governor in Council fixes. Further deposit
5. If the insurer obtains a certificate of registration from the Government of Canada extending to this or another province and as a registrant makes a deposit under the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada), the Minister may, on the request of the insurer, authorize the Treasurer of Ontario to deliver to the insurer or to transfer to the Minister Transfer of deposit to Minister of Finance

of Finance for Canada all or any part of such deposit as the Minister thinks fit having regard to the extent of the certificate of registration, and the Superintendent shall forthwith give notice of the delivery or transfer to the superintendent of insurance of each reciprocating province.

Notice of  
suspension  
or cancella-  
tion of  
licence

6. Where the licence of the insurer is suspended or cancelled under this Act, the Superintendent shall forthwith give notice to the superintendent of insurance in each province.

Cessation  
of business  
in Canada

7. Where the insurer ceases to carry on insurance business in Canada and its deposit may be withdrawn under this Act, the Superintendent shall notify the superintendent of insurance in each province, and all claims and liabilities arising in any such province shall be verified by the superintendent of insurance of that province and a statement thereof communicated to the Superintendent.

Cessation of  
business in  
reciprocating  
province

8. Where the insurer ceases to transact business in or its licence is suspended or cancelled in a reciprocating province and notice thereof is given to the Superintendent, the Minister and the Superintendent, upon the request of the superintendent in the reciprocating province, may take any action that could be taken if the insurer ceased to transact business in or its licence was suspended or cancelled in Ontario.

Change of  
location of  
head office  
and transfer  
of deposit

(2) The insurer shall not change the location of its head office to another province without the consent of the Minister, but, where the Minister so consents, he may authorize the Superintendent to transfer the insurer's deposit to the minister responsible for the deposit in that province or to the insurer, as the minister in that province requests, and the Superintendent shall forthwith give notice of any change or transfer to the superintendent of insurance of each reciprocating province. R.S.O. 1970, c. 224, s. 72.

Exemption  
of insurer  
with head  
office for  
Canada in  
another  
province

**75.**—(1) Where an insurer has its head office for Canada in another province and there makes a deposit of such amount as is fixed by the proper authority in that province, and under the laws of that province the deposit is held as security *pari passu* for its Ontario contracts and its contracts in every reciprocating province, the Minister, upon receipt of a certified copy of an order of the lieutenant governor in council of the province in which the deposit is made fixing the amount of the deposit and declaring that Ontario is a

reciprocating province with respect to that insurer's deposit, and upon receipt of the consent of the insurer to its deposit being so held, shall exempt the insurer from the provisions of this Act requiring it to make and maintain a deposit.

(2) Where the insurer ceases to transact business in or its licence is suspended or cancelled in Ontario, the Superintendent shall forthwith give notice thereof to the superintendent of insurance of the province in which the reciprocal deposit is held and to the superintendent of insurance of each other reciprocating province.

Notice of  
ceasing to  
transact  
business

(3) Where an order is made for the administration of a reciprocal deposit held in another province under subsection (1), the Superintendent, as soon as is reasonably possible after receipt of notice of the termination date fixed by the receiver, shall proceed pursuant to section 59 to give the notice required by that section to the insured persons under the Ontario contracts.

Notice to  
insured  
persons  
under  
Ontario  
contracts

(4) Where a licensed insurer is exempted under this section, the Minister shall transfer its deposit under this Act to the minister responsible for the deposit in the province in which the insurer has its head office or to the insurer, as that minister requests. R.S.O. 1970, c. 224, s. 73.

Transfer  
of deposit

**76.** At any time before the granting of an order for the administration of a reciprocal deposit, the superintendent of insurance of each reciprocating province may enter into an agreement to use all or any part of the securities deposited for the purpose of reinsuring all or any part of the risks of the insurer outstanding in all or any of those provinces. R.S.O. 1970, c. 224, s. 74.

Agreement  
to use  
securities to  
reinsure

**77.**—(1) The Lieutenant Governor in Council may, on being satisfied that any other province has enacted provisions identical with or substantially the same as sections 73 to 75, order that those sections apply to that province.

Application  
of ss. 73-75  
to other  
provinces

(2) A copy of every order under subsection (1) shall be sent to the superintendent of insurance in each province. R.S.O. 1970, c. 224, s. 75.

Copy of  
order

**78.**—(1) Where a licensed insurer, hereinafter called the continuing insurer, has, by purchase or otherwise, acquired the assets and assumed the liabilities in Ontario of another licensed insurer, hereinafter called the discontinuing insurer, or reinsured all the contracts of a discontinuing insurer outstanding in Ontario, the Lieutenant Governor in Council may, upon the application of the continuing insurer, and upon

Transfer of  
deposit from  
discontinuing  
insurer to  
continuing  
insurer

the report of the Superintendent, direct the transfer of the deposit held by the Minister under this Act in the name of the discontinuing insurer to the continuing insurer.

Effect of  
transfer

(2) In any such case, the deposit so transferred shall thereafter be treated and dealt with under this Act in the same manner as though it had been originally deposited by the continuing insurer. R.S.O. 1970, c. 224, s. 76.

#### RECORDS AND RETURNS

Report on  
share  
transfers

**79.** No transfers of shares of an insurer shall be entered in the book or books maintained for that purpose until thirty days after notice thereof has been deposited with the Superintendent if,

- (a) the transfer relates to 10 per cent or more of the issued shares of the insurer for the time being enjoying voting rights; or
- (b) the directors have reason to believe that the transfer would result in a majority of the issued shares of the insurer for the time being enjoying voting rights being beneficially owned by any one person. R.S.O. 1970, c. 224, s. 77.

Statistical  
returns

**80.**—(1) Every licensed insurer that carries on in Ontario the business of automobile insurance, fire insurance, property damage insurance or sprinkler leakage insurance shall prepare and file, when required, with the Superintendent, or with such statistical agency as he may designate, such statistical return of the experience of such business as the Superintendent may require and in such form and manner and according to such system of classification as he may approve.

Compilation  
of data

(2) The Superintendent may require any agency so designated to compile the data so filed in such form as he may approve, and the expense of making the compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent who shall certify in writing the amount due from each insurer and it is payable by the insurer to such agency forthwith.

Audit and  
direction  
where  
records not  
duly kept

(3) If at any time it appears to the Minister on the report of the Superintendent that the insurer's record of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the statistical return, the Minister may nominate a competent accountant to proceed under his direction to audit

the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly thereafter.

(4) The expense of such an audit shall be borne by the insurer and shall not exceed \$15 per day and necessary travelling expenses of the accountant nominated, and the account shall, when certified and approved under the hand of the Superintendent, be paid by the insurer forthwith. <sup>Expenses of audit</sup>

(5) Any insurer that contravenes this section, and the principal officer in Ontario of any such insurer, are guilty of an offence. R.S.O. 1970, c. 224, s. 78. <sup>Offence</sup>

**81.**—(1) Subject to sections 323 and 327, every licensed insurer shall prepare annually and deliver to the Superintendent, on or before the last day of February of each year, a statement of the condition of affairs of the insurer as at the 31st day of December next preceding, which statement shall be in such form as may be prescribed by the Superintendent and shall exhibit the assets, liabilities, receipts and expenditures of the insurer for the calendar year ended on such date, and shall also exhibit particulars of the business done in Ontario during such year and such other information as is considered necessary from time to time by the Minister or Superintendent, and such statement shall be verified in a manner that may be prescribed by the Superintendent. <sup>Annual statement</sup>

(2) In the case of an insurer designated by the Lieutenant Governor in Council, the Superintendent may, in lieu of the annual statement required to be filed by all insurers under subsection (1), direct the preparation of a modified statement respecting the business of the insurer in Ontario only. <sup>Modified statement for Canada licensees</sup>

(3) In the case of a corporation, such statement shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation. <sup>Who may verify statement</sup>

(4) An insurer shall, when required by the Superintendent, make prompt and explicit answer in reply to any inquiry directed to the insurer by him in relation to the statement or in relation to the transactions of the insurer in Ontario. <sup>Prompt reply to inquiries</sup>

(5) Subject to subsection (6), in the case of all classes of insurance, other than life insurance, and in the case of all insurers, the statement shall show as a liability of the insurer not less than 80 per cent of the actual portions of unearned <sup>Unearned premiums a liability</sup>

premiums on all business in force on the 31st day of December then last past or not less than 80 per cent of 50 per cent of the premiums written in its policies and received in respect of contracts having one year or less to run and *pro rata* on those for longer periods.

Reserve  
liability  
on non-  
cancellable  
accident  
and sickness  
insurance

(6) In the case of non-cancellable accident and sickness insurance, the statement shall show as a liability of the insurer a reserve computed on such bases and in accordance with such methods as will place an adequate value on the liabilities thereunder, but in no case shall the value placed upon the benefits under any policy be less than the value placed upon the future premiums.

Life  
insurers

(7) In the case of insurers transacting life insurance, the statement shall show as a liability the valuation of outstanding contracts of insurance according to the standard for valuation prescribed by section 85, or such higher standard as the insurer, with the approval of the Superintendent, adopts.

Certain  
agents'  
balances,  
unauthorized  
securities,  
etc., must  
not show  
as assets

(8) The statement shall not show as assets the unpaid balances owing by agents or other insurers in respect of business written before the 1st day of October in the next preceding calendar year, or bills receivable on account of the same, or unpaid capital or premium on subscribed shares of capital stock, or investment in office furnishings or equipment, nor shall such statements include as assets any investments not authorized by any special or general Act to which the insurer is subject.

Valuation  
of securities

(9) Every licensed insurer may, in its annual statement or in any valuation of its securities required to be made, value all of its securities having a fixed term and rate and not in default as to principal or interest according to the following rule: if purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and the Superintendent has full discretion in determining the method of calculating values according to the foregoing rule. R.S.O. 1970, c. 224, s. 79.

Published  
statements

**82.** A statement purporting to show the financial condition of an insurer differing from the financial condition shown by the statement filed with the Superintendent, or a balance sheet or other statement in form differing from the form

prescribed by the regulations, shall not be published or circulated, and every insurer publishing such a statement is guilty of an offence. R.S.O. 1970, c. 224, s. 80.

**83.** Every person who represents orally or in writing that the issue of a licence to an insurer or the printing or publication of an annual statement in the report of the Superintendent or in any other publication of the Superintendent or any other circumstance of the supervision or regulation of the business of the insurer by law or the Superintendent is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity is guilty of an offence. R.S.O. 1970, c. 224, s. 81.

Statements  
that  
financial  
standing  
guaranteed by  
government  
prohibited

#### REAL ESTATE

**84.—(1)** A licensed insurer, and, subject to its constitution and rules, a licensed fraternal or mutual benefit society or any branch or lodge thereof, may acquire and hold absolutely for its own use and benefit such real estate or leaseholds,

Powers of  
insurer to  
hold real  
estate

- (a) as are necessary for the transaction of its business; and
- (b) as are *bona fide* mortgaged to it by way of security or are acquired by it by foreclosure or in satisfaction of a debt,

and may sell, mortgage, lease or otherwise dispose of the same, but real estate or leaseholds acquired by foreclosure or in satisfaction of a debt shall be sold or disposed of within seven years after they have been so acquired.

(2) Except in the case of a fraternal or mutual benefit society or any branch or lodge thereof, a licensed insurer may,

Additional  
real estate

- (a) acquire and hold real estate or leaseholds in addition to those provided for by subsections (1) and (6); and
- (b) acquire or construct and hold a building larger than is required for the transaction of its business, and may lease any part of the building not so required,

upon complying with and subject to the *Mortmain and Charitable Uses Act*, if the insurer is subject thereto, in respect of the additional real estate or the part of the building not so required.

R.S.O. 1980,  
c. 297

Powers of  
societies  
re office  
building

(3) A licensed fraternal or mutual benefit society or any branch or lodge thereof may, subject to its constitution or rules and when so authorized by the Lieutenant Governor in Council, acquire or construct and hold a building larger than is required for the transaction of its business, and may lease any part of the building not so required.

Forfeiture

(4) Any real estate or leaseholds acquired by foreclosure or in satisfaction of a debt that have been held by the insurer for a longer period than seven years without being disposed of shall, unless held pursuant to any other provision of this section, be forfeited to Her Majesty for the use of Ontario.

Idem

(5) No forfeiture under subsection (4) shall take effect until the expiration of at least six calendar months after notice in writing to the insurer by the Minister of the intention of Her Majesty to claim the forfeiture, but the insurer may, notwithstanding such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture.

Investments  
in real estate

(6) A licensed insurer that has invested its funds in such real estate or leaseholds as are referred to in subsections 388 (1), (2), (4) and (6) may acquire and hold such property absolutely for its own use and benefit.

Rights  
under  
section are  
additional

R.S.O. 1980,  
c. 297

(7) Except where otherwise provided, every right, power and authority granted by this section is in addition to any right, power and authority granted by a licence issued under the *Mortmain and Charitable Uses Act* or any other Act. R.S.O. 1970, c. 224, s. 82.

#### LIFE INSURANCE RESERVES

Valuation  
of contracts  
of insurance

**85.**—(1) The valuation of contracts of insurance issued by insurers incorporated and licensed under the law of Ontario to transact life insurance, except contracts of fraternal societies licensed under this Act, shall include a reserve for all unmatured obligations guaranteed under the terms of its policies dependent on life, disability, sickness, accident or any other contingency or on a term certain, and shall also include a reserve for profits ascertained and apportioned for future distribution.

Methods of  
computation  
for life  
policies

(2) In computing the reserve for all unmatured obligations guaranteed under the terms of the policies dependent on life contingencies only, the valuation shall be made in accordance with the following prescriptions:

1. The rate of interest assumed shall not exceed the rate prescribed in Schedule B, except that where, upon the application of a company and upon the recommendation of the Superintendent, the Lieutenant Governor in Council is satisfied that a higher rate is appropriate for a particular class of policy issued by the company, the Lieutenant Governor in Council may by order authorize the assumption of such higher rate of interest as the Lieutenant Governor in Council specifies in the order, and the Lieutenant Governor in Council may by order withdraw the authorization at any time and an order of the Lieutenant Governor in Council under this paragraph shall be deemed to be a regulation within the meaning of the *Regulations Act*.
2. The tables of mortality used shall be the tables prescribed in Schedule B, subject to any modification in the age that the company considers appropriate and necessary to secure the proper valuation of a particular class of policies and that has the effect of increasing the reserves, but, if it appears to a company that the reserves for a particular class of policies cannot be appropriately computed by any table of mortality prescribed by Schedule B or by any such table modified as aforesaid, the company shall apply to the Superintendent for approval of the table the company considers most appropriate for the computation, and the Superintendent may grant such approval and revoke it at any time.
3. The method of valuation shall be that specified in Schedule B or any adaptation thereof approved by the Superintendent, or any other method the company considers appropriate, but the method used shall be such that the reserve calculated in accordance therewith will not be less at any duration than the reserve computed in accordance with the valuation provisions of Schedule B, and the method used shall make adequate provision for the guaranteed values at the subsequent durations of the policy according to the rate of interest and the table of mortality used in the valuation.
4. The reserve in the first policy year need not in any event exceed the reserve computed in accordance with the rate of interest and table of mortality used in the valuation and the method of valuation as specified in Schedule B.

R.S.O. 1980,  
c. 446

Computation  
for other  
than life  
policies

(3) In computing the reserve for all unmatured obligations that are guaranteed under the terms of, or that arise out of policies dependent on, contingencies other than life contingencies, the bases and methods of valuation employed by the company shall be such as to place an adequate value on the liabilities thereunder and shall be such that the value of the benefits under every policy shall in no case be less than the value placed upon the future premiums.

Certificate  
of actuary

(4) There shall be included in the annual statement a certificate by the actuary of the company, or by the actuary responsible for the valuation if the company has no actuary, to the effect that the reserves shown in the valuation summary are not less than the reserves required by this section and, in addition, that in his opinion the reserves make a good and sufficient provision for all unmatured obligations of the company guaranteed under the terms of its policies.

Report on  
approved  
mortality  
tables

(5) Where the Superintendent approves of a table of mortality under subsection (2), he shall include in his annual report to the Minister information concerning the origin, characteristics of the table and the circumstances in which it may be used, and, when the Superintendent revokes any such approval, he shall include a statement as to the circumstances of the revocation.

Contracts  
must be  
self-  
supporting

(6) No insurer shall issue any policy that does not appear to be self-supporting upon reasonable assumptions as to interest, mortality and expenses.

Valuation  
of fraternal  
society  
contracts

(7) Where the contracts of a fraternal society are reinsured by a licensed insurer other than a fraternal society, the reinsurer may, with approval of the Superintendent, value such contracts on any appropriate table of mortality specified in Schedule B with interest at 4 per cent per annum. R.S.O. 1970, c. 224, s. 83.

Authoriza-  
tion for  
variable  
contracts  
based on  
segregated  
funds

**86.**—(1) Any insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance may,

- (a) issue policies for which the reserves vary in amount with the market value of a specified group of assets; and
- (b) retain for investment,

- (i) policy dividends,
- (ii) policy proceeds that become payable on surrender or maturity of the policy not less than five years from the date of its issue if the policyholder so directs, and
- (iii) policy proceeds that become payable on the death of the policyholder if the policyholder or beneficiary so directs,

on the basis that the liability of the insurer in respect thereof varies in amount with the market value of a specified group of assets,

and the insurer shall maintain in respect of such policies, dividends and proceeds, as the case may be, one or more separate and distinct funds with separate assets for each such fund.

(2) For the purpose of creating a separate and distinct fund under subsection (1), an insurer may, if duly authorized by by-law,

How fund  
created

- (a) make a transfer from the shareholders' fund but the amounts so transferred shall not exceed the surplus in the shareholders' fund; and
- (b) make a transfer of assets from one or more life insurance funds, but,
  - (i) the maximum amount that may be transferred from any life insurance fund is the amount by which 25 per cent of the surplus in that fund exceeds the aggregate of all prior transfers from that fund to all such separate and distinct funds under this subsection and clause (3) (b) less the aggregate of all prior transfers to that fund pursuant to clause (5) (a), and
  - (ii) the maximum amount that may be transferred from all life insurance funds is the amount by which 10 per cent of the surplus in those funds or \$2,000,000, whichever is the lesser, exceeds the aggregate of all prior transfers from those funds to all such separate and distinct funds pursuant to this subsection and clause (3) (b) less the aggregate of all prior transfers to all life insurance funds pursuant to clause (5) (a).

Transfers  
to fund

(3) For the purpose of maintaining a separate and distinct fund under subsection (1), an insurer may from time to time make transfers from a life insurance fund,

- (a) to the extent that the assets of the separate and distinct fund are not sufficient to provide for any benefits guaranteed under the terms of the policies for which the separate fund is held; or
- (b) in any case other than that mentioned in clause (a), if the insurer provides evidence satisfactory to the Superintendent that such transfers are necessary for the proper administration of the policies or deposits for which the separate fund is held.

## Surplus

(4) Where for the purposes of subsection (2) the surplus in any fund is required to be determined, the surplus shall be taken as shown in the most recent annual statement filed with the Superintendent.

Segregation  
of assets  
for policies

(5) Where a separate and distinct fund is maintained under subsection (1), the assets of such fund shall, subject to subsection (3), be available only to meet the liabilities arising under the policies or deposits in respect of which such fund is maintained, except that,

- (a) any amount representing the value of a transfer, or any part thereof, to such separate and distinct fund under subsection (2) or clause (3) (b), may, with the approval of the Superintendent, be transferred back to the fund or funds from which such transfer was made, and, where there is more than one such fund, the amount transferred back to each shall be that proportion of the whole amount that the amount transferred from that fund to the separate and distinct fund was to the total amount so transferred from all the funds; and
- (b) any assets, other than assets in respect of a transfer to the separate and distinct fund under subsection (2) or clause (3) (b), remaining in the separate and distinct fund after the discharge of all the insurer's liabilities in respect of the policies or deposits for which the fund is maintained, may be transferred to such other fund as the directors may determine.

Value of  
transfers

(6) For the purposes of clause (2) (b), the value of any assets transferred to or from a separate and distinct fund shall be taken as the value thereof at the time of transfer to that fund and, for all other purposes, the value from time to time of any assets that have

been transferred to a separate and distinct fund maintained under subsection (1) shall be the market value of such assets. R.S.O. 1970, c. 224, s. 84 (1-6).

(7) Where a separate and distinct fund is maintained under subsection (1), the percentage limits specified in clauses 390 (e) and (f) do not apply to the investments and loans constituting the assets of the fund and in the application of those limits to the insurer as a whole the assets of any such separate fund shall not be taken into account, but clause 390 (c) applies to each separate and distinct fund as if the total assets of each such fund were the total assets of the insurer. R.S.O. 1970, c. 224, s. 84 (7); 1971, c. 84, s. 4; 1973, c. 124, s. 8.

Exception  
from  
investment  
limitations

**87.**—(1) In this section, “variable insurance contract” means an annuity or life insurance contract for which the reserves or a part thereof vary in amount with the market value of a specified group of assets held in a separate and distinct fund and includes a provision in a life insurance contract under which policy dividends or policy proceeds may be retained for investment in such a fund. - R.S.O. 1970, c. 224, s. 85 (1); 1973, c. 124, s. 9 (1).

Definition  
of variable  
insurance  
contracts

(2) No insurer shall issue a variable insurance contract or offer to enter into a variable insurance contract that under this Act would be deemed to be made in Ontario until there has been filed with the Superintendent a specimen form of such variable insurance contract, an information folder pertaining thereto and such other material as may be required under the regulations and a receipt therefor has been obtained from the Superintendent.

Prohibition

(3) The forms of variable insurance contracts and information folders with respect thereto shall comply with the requirements of Part V of this Act and the regulations.

Form of  
contract

(4) The information folder shall provide brief and plain disclosure of all material facts relating to the variable insurance contract and shall contain a certificate to that effect signed by the chief executive officer and the chief financial officer of the insurer or such other persons as the regulations may prescribe.

Form of  
information  
folder

(5) No application for a variable insurance contract shall be accepted by an insurer until the insurer has delivered to the applicant therefor a copy of the latest information folder relating thereto that is on file with the Superintendent.

Delivery of  
information  
folder

New  
information  
folders

(6) So long as an insurer continues to issue a variable insurance contract in respect of which it has filed an information folder, it shall,

- (a) forthwith after the occurrence of any material change in the contract or in any other facts set out in the latest information folder so filed; and
- (b) within thirteen months after the date of filing of the latest information folder so filed, or such other period of time as may be provided by the regulations,

file with the Superintendent a new information folder in respect thereof.

Prohibition  
order

(7) Where it appears to the Superintendent that,

- (a) an information folder or any other document filed with the Superintendent by an insurer with respect to a variable insurance contract,
  - (i) fails to comply in any substantial respect with the requirements of this Act or the regulations,
  - (ii) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive, or
  - (iii) conceals or omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or
- (b) the financial condition of the insurer or its method of operation in connection with the issuance of its variable insurance contracts will not afford sufficient protection to prospective purchasers of such variable insurance contracts in Ontario,

the Superintendent shall report the same to the Minister and the Minister, if he concurs in the report and after affording the insurer an opportunity to be heard, may order the Superintendent to prohibit the insurer from continuing to issue such variable insurance contracts in Ontario. R.S.O. 1970, c. 224, s. 85 (2-7).

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form and content of variable insurance contracts;

- (b) prescribing the form, content, time of filing and delivery of information folders and the persons to whom information folders shall be delivered;
- (c) for the furnishing of information by an insurer or an agent thereof to prospective purchasers of variable insurance contracts;
- (d) prescribing the documents, reports, statements, agreements and other information required to be filed, furnished or delivered under this section, and the form and content thereof. R.S.O. 1970, c. 224, s. 85 (8); 1973, c. 124, s. 9 (2).

**88.** Every insurer licensed to transact life insurance shall keep separate and distinct accounts of participating and non-participating business. R.S.O. 1970, c. 224, s. 86. Separate accounts

**89.**—(1) The directors of an insurer incorporated and licensed under the laws of Ontario to transact the business of life insurance as a joint stock insurance company may from time to time set apart such portion of the net profits as they consider safe and proper for distribution as dividends or bonuses to shareholders and holders of participating policies ascertaining the part thereof that has been derived from participating policies and distinguishing that part from the profits derived from other sources. Distribution of part of profits to participating policyholders

(2) Notwithstanding anything to the contrary in any letters patent of incorporation or contract, the holders of participating policies are entitled to share in that portion of the profits that has been distinguished as having been derived from participating policies (including a share of the profits arising from the sale of securities in the proportion of the mean participating fund to the mean total funds) to the extent of at least 90 per cent thereof in any year. Idem

(3) In fixing or arriving at the amount of divisible profits, there may be included interest on the amount of the unimpaired paid up capital stock and on any other sum or sums from time to time standing to the credit of the shareholders after deducting any amounts expended in the establishment, prosecution or extension of the company's business or applied to making good any impairment of capital, and such interest may be allowed or credited to the shareholders at the average net rate of interest earned in the preceding year or other period under consideration upon the mean total funds of the company, but the shareholders are to be charged with a fair proportion of all losses incurred upon Interest on unimpaired paid up capital stock

investments or other losses of a similar character in the proportion of the mean shareholders' funds to the mean total funds.

Rights of  
participating  
policyholders

(4) This section does not interfere with the rights of the participating policyholders of an insurer referred to in subsection (1) to share in the profits realized from the non-participating branch of its business in any case to which the policyholders are so entitled. 1973, c. 124, s. 10.

#### INSURANCE WITH UNLICENSED INSURERS

Insurance  
with  
unlicensed  
insurers

**90.** Notwithstanding anything in this Act, any person may insure property situated in Ontario against fire with an unlicensed insurer, and any property insured or to be insured under this section may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside Ontario and without any solicitation whatsoever directly or indirectly on the part of the insurer. R.S.O. 1970, c. 224, s. 87.

#### UNDERWRITERS AGENCIES

Licence

**91.**—(1) A policy of insurance shall not be issued through any underwriters agency under its own name for an insurer, unless the insurer is licensed to carry on business in Ontario and has obtained from the Superintendent a licence to issue contracts of insurance through such underwriters agency.

Form of  
policy

(2) Every policy of insurance issued through any such underwriters agency shall be in a form approved by the Superintendent and shall bear upon its face the name and address of the insurer in a prominent and conspicuous manner, and the name of the underwriters agency shall not appear on the face of the policy except as a countersignature thereto.

Name on  
filing back

(3) On no other part of the policy shall the name of the underwriters agency appear except that for identification purposes the words "issued through the . . . . . Underwriters Agency" may be printed on the filing back of the policy following the name of the insurer and in type not larger than half the depth of that used in printing such name.

Evidence of  
adoption of  
form of  
policy by  
insurer

(4) Upon an application for a licence under this section, the insurer shall furnish to the Superintendent evidence of its approval and adoption of the form of policy to be issued through the underwriters agency and of the authority of the underwriters agency or its agents to bind the insurer.

(5) Every insurer licensed under this Act carrying on business or issuing any policy of insurance through any such underwriters agency shall file an annual return of the business transacted through the same underwriters agency in a form prescribed by the Superintendent. R.S.O. 1970, c. 224, s. 88.

Annual  
return

GENERAL

**92.** Any person, other than an insurer or its duly authorized agent, who advertises or holds himself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself or any other person, is guilty of an offence. R.S.O. 1970, c. 224, s. 89.

Trafficking  
in life  
insurance  
policies  
prohibited

**93.** Any information, document, record, statement or thing made or disclosed to the Superintendent concerning a person licensed or applying for licence under this Act is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person. R.S.O. 1970, c. 224, s. 90.

Privileged  
information

**94.**—(1) The Superintendent may require an insurer to file with him a copy of any form of policy or of the form of application for any policy issued or used by the insurer.

Insurer to  
file form of  
policy

(2) The Superintendent shall report to the Minister any case where an insurer issues a policy or uses an application that, in the opinion of the Superintendent, is unfair, fraudulent or not in the public interest, and after hearing the insurer the Minister may, if he concurs in the report, order the Superintendent to prohibit the insurer from issuing or using such form of policy or application.

Prohibition  
of certain  
policies

(3) An insurer that, after being so prohibited, issues any such policy or uses any such application is guilty of an offence. R.S.O. 1970, c. 224, s. 91.

Offence

**95.** Unless the contract otherwise provides, a contravention of any criminal or other law in force in Ontario or elsewhere does not, *ipso facto*, render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract. R.S.O. 1970, c. 224, s. 92.

Violation  
of law,  
effect of,  
on claim for  
indemnity

Reporting on  
applications  
to register  
under  
R.S.C. 1970,  
c. I-15

**96.** An insurer incorporated under the laws of Ontario shall notify the Superintendent fourteen days in advance of making application for registration under Part IX of the *Canadian and British Insurance Companies Act* (Canada) or any similar enactment or regulation of the Government of Canada. R.S.O. 1970, c. 224, s. 93.

#### PENALTIES

General  
penalty

**97.**—(1) Unless otherwise provided, every person who, knowingly,

- (a) furnishes false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of an insurer who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Where an insurer is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the insurer is \$25,000 and not as provided therein. 1973, c. 124, s. 11, *part*.

Suspension  
of licence

(3) In addition, where an insurer contravenes the prohibitions or fails to comply with the requirements of this Act, the Lieutenant Governor in Council may, upon the report of the Superintendent, suspend or cancel the licence of the insurer. R.S.O. 1970, c. 224, s. 94 (2).

Penalty for  
carrying on  
business  
without a  
licence

(4) Every person who,

- (a) undertakes insurance or carries on business as an insurer in Ontario;
- (b) acts on behalf of an insurer in Ontario; or
- (c) does or performs any one or more of the acts constituting the business of insurance,

in relation to any class of insurance without being licensed for that class, is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 1973, c. 124, s. 11, *part*.

(5) In case of default in making a return required by this Act to be made within a limited time, the insurer or the person required by this Act to make the return shall, in addition to the fine provided by subsection (1), incur a further fine of \$100 for every month or part thereof during which such insurer or person neglects to file the return so required. Penalty for default in making returns

(6) The fines imposed under this Act are recoverable under the *Provincial Offences Act* and when recovered shall be paid over to the Treasurer of Ontario for the use of Ontario. R.S.O. 1970, c. 224, s. 94 (4-6). Recovery and disposition of fines  
R.S.O. 1980, c. 400

#### FEES AND REGULATIONS

**98.** The Lieutenant Governor in Council may make regulations, Regulations

- (a) requiring the payment of fees for licences and renewals of licences and in respect of any function performed by the Superintendent under this Act and prescribing the amounts thereof;
- (b) amending or altering the terms, conditions, provisions, exclusions and limits set forth in Schedule C;
- (c) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
- (d) governing group insurance contracts or schemes, or any class thereof including prescribing and regulating their terms and conditions, qualifications for membership in groups and regulating the marketing of group insurance contracts or schemes;
- (e) prescribing and defining the terms and conditions upon which an insurer licensed to transact the business of life insurance may invest its funds in fully paid shares of other corporations under the provisions of this Act;
- (f) governing the advertising of insurance contracts or any class thereof including prescribing and

regulating the form and content of advertisements and requiring their filing;

- (g) generally for the better administration of this Act. R.S.O. 1970, c. 224, s. 95 (3); 1971, c. 84, s. 5; 1973, c. 124, s. 12 (2, 3).

### PART III

#### INSURANCE CONTRACTS IN ONTARIO

Application  
of Part

**99.** Except where otherwise provided and where not inconsistent with other provisions of this Act, this Part applies to every contract of insurance made in Ontario, other than contracts of,

(a) accident and sickness insurance;

(b) life insurance; and

(c) marine insurance. R.S.O. 1970, c. 224, s. 96.

Contracts  
deemed  
made in  
Ontario

**100.** Where the subject-matter of a contract of insurance is property in Ontario or an insurable interest of a person resident in Ontario, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the insured, his assign or agent in Ontario shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insurer in lawful money of Canada. R.S.O. 1970, c. 224, s. 97.

Terms, etc.,  
of contracts  
invalid  
unless set  
out in full

**101.—**(1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, and, unless so set out, no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or beneficiary.

Exception

(2) Subsection (1) does not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

Contents of  
renewal  
receipt

(3) Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt, it is a

sufficient compliance with subsection (1) if the terms and conditions of the contract are set out as provided by that subsection and the renewal receipt refers to the contract by its number or date.

(4) The proposal or application of the insured shall not as against him be deemed a part of or be considered with the contract of insurance except in so far as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

What regard  
to be given  
to proposal

(5) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

Contract  
not to be  
invalidated  
by erroneous  
statement in  
application  
unless  
material

(6) The question of materiality in a contract of insurance is a question of fact for the jury, or for the court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto, has any force or validity.

Materiality,  
how decided

(7) This section does not apply to contracts of fire or automobile insurance. R.S.O. 1970, c. 224, s. 98.

Application

**102.** An insurer shall upon request furnish to the insured a true copy of his application or proposal for insurance. R.S.O. 1970, c. 224, s. 99.

Copy of  
proposal to  
be furnished  
to insured

**103.—**(1) No insurer shall make a contract of insurance inconsistent with this Act.

No contract  
shall be  
inconsistent  
with Act

(2) An act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act does not render a contract invalid as against the insured. R.S.O. 1970, c. 224, s. 100.

Rights of  
insured

**104.—**(1) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or

Contents  
of policy

persons to whom the insurance money is payable, the amount, or the method of determining the amount, of the premium for the insurance, the subject-matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue, the date upon which the insurance takes effect and the date it terminates or the method by which the latter is fixed or to be fixed.

Application  
of section

(2) This section does not apply to contracts of guarantee insurance. R.S.O. 1970, c. 224, s. 101.

Application

**105.**—(1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

Appraisals

(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire.

Appraisers

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

Costs

(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

Appointment  
by judge

(5) Where,

- (a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so;
- (b) the appraisers fail to agree upon an umpire within fifteen days after their appointment; or
- (c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a judge of the county or district court of the county or district in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer. R.S.O. 1970, c. 224, s. 102.

**106.** Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just. R.S.O. 1970, c. 224, s. 103.

Relief from  
forfeiture

**107.** Insurance money is payable in Ontario in lawful money of Canada. R.S.O. 1970, c. 224, s. 104.

How policy  
payable

**108.**—(1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

Waiver of  
term or  
condition

(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract. R.S.O. 1970, c. 224, s. 105.

Idem

**109.**—(1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against him in respect of his liability, and an execution against him in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

Right of  
claimant  
against  
insurer where  
execution  
against  
insured  
returned  
unsatisfied

(2) This section does not apply to motor vehicle liability policies. R.S.O. 1970, c. 224, s. 106.

Exception

**110.**—(1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance, the court may consolidate or otherwise deal therewith so that there is but one action for and in respect of all the claims made in such actions.

Consolidation  
of actions

(2) Where an action is brought to recover the share of one or more minors, all the other minors entitled, or the trustees, executors or guardians entitled to receive payment of the shares of such other minors, shall be made parties to the action, and the rights of all the minors shall be determined in one action.

Where  
minors are  
entitled to  
insurance  
money

Apportionment of sums directed to be paid

(3) In all actions where several persons are interested in the insurance money, the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

When payee is domiciled or resident abroad

(4) Where the person entitled to receive money due and payable under a contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of such jurisdiction, is made to such person, such payment is valid and effectual for all purposes. R.S.O. 1970, c. 224, s. 107.

Effect of delivery of policy

**111.**—(1) Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

Right of insurer in respect of unpaid premium

(2) The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which he is liable under the contract of insurance.

Where note or cheque for premium not honoured

(3) Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail. R.S.O. 1970, c. 224, s. 108.

Insurer to furnish forms

**112.**—(1) An insurer, immediately upon receipt of a request, and in any event not later than sixty days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

Offence

(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and in addition section 113 is not available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of moneys alleged to be payable under the contract of insurance.

Furnishing of forms not an admission

(3) The furnishing by an insurer of forms to make proof of loss shall not be taken to constitute an admission by the insurer that a valid contract is in force or that the loss in question falls within the insurance provided by the contract. R.S.O. 1970, c. 224, s. 109.

**113.** No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract,

When action may be brought under contract

(a) of the loss; or

(b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as is fixed by the contract of insurance. R.S.O. 1970, c. 224, s. 110.

#### INSURANCE AS COLLATERAL SECURITY

**114.**—(1) A mortgagee shall not accept or be entitled to receive either directly or through his agent or employee, and no officer or employee of such mortgagee shall accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

Mortgagee not to receive commission from insurer

(2) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in his employ or on his behalf in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

Payment of commission prohibited

(3) Any insurer or other person who contravenes this section is guilty of an offence. R.S.O. 1970, c. 224, s. 111.

Offence

**115.**—(1) Where an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

Right to refund of premium on termination of contract

(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section. R.S.O. 1970, c. 224, s. 112.

Idem

## CONTRACTS OF GUARANTEE INSURANCE

Contracts  
of title  
insurance

**116.**—(1) Every contract of title insurance shall be in writing, and, in addition to the other requirements prescribed by this Act, shall expressly limit the liability of the insurer to a sum stated in the contract.

Questions as  
to validity  
of title

(2) If a question arises as to the validity of the title insured, or as to the liability of the insurer, the insurer or the insured or any person entitled to proceed in right of either may by application have such question determined as provided in the *Vendors and Purchasers Act* in the case of vendors and purchasers. R.S.O. 1970, c. 224, s. 113.

R.S.O. 1980,  
c. 520

## GENERAL

No racial  
or religious  
discrimina-  
tion  
permissible

**117.** Any licensed insurer that discriminates unfairly between risks in Ontario because of the race or religion of the insured is guilty of an offence. R.S.O. 1970, c. 224, s. 114.

Payment  
into court

**118.**—(1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the court *ex parte* for an order for the payment thereof into court, and the court may order the payment into court to be made upon such terms as to costs and otherwise as the court may direct, and may provide to what fund or name the amount shall be credited.

Discharge  
to insurer

(2) The receipt of the registrar or other proper officer of the court is sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court. R.S.O. 1970, c. 224, s. 115.

## PART IV

## FIRE INSURANCE

Interpre-  
tation

**119.** In this Part, unless the context otherwise requires, "agricultural property" includes dwelling-houses, stables, barns, sheds and outbuildings and their contents, wagons, carriages, and other vehicles, saddles and harness, agricultural engines, implements, tools, instruments, appliances and machinery, household goods, wearing apparel, provisions, musical instruments, libraries, live stock, growing crops, and crops severed from the land, fruit and ornamental trees, shrubs and plants, and live or standing timber, being upon farms as farm property, and owned by members of the insurer in which the property is insured. R.S.O. 1970, c. 224, s. 116.

**120.**—(1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in Ontario except, <sup>Application of Part</sup>

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;
- (b) where the subject-matter of the insurance is rents, charges or loss of profits;
- (c) where the peril of fire is an incidental peril to the coverage provided; or
- (d) where the subject-matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) Notwithstanding subsection (1), this Part applies to <sup>Automobiles</sup> insurance of an automobile as provided in subsection 27

(2). R.S.O. 1970, c. 224, s. 117.

**121.**—(1) Subject to subsection (4) of this section and to clause 128 (a), in any contract to which this Part applies the <sup>Extent of coverage by contract</sup> contract shall be deemed to cover the insured property,

- (a) against fire (whether resulting from explosion or otherwise) not occasioned by or happening through,
  - (i) in the case of goods, their undergoing any process involving the application of heat,
  - (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- (b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire;
- (c) against explosion (not occasioned by or happening through any of the perils specified in subclause (a) (ii) ) of

natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

Radio-  
active  
contami-  
nation

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radio-active material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

Coverage  
where  
property  
removed

(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

Extended  
insurance

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

Power to  
extend  
meaning of  
"lightning"  
in live stock  
contracts

(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of live stock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents. R.S.O. 1970, c. 224, s. 118.

Renewal of  
contract

**122.** A contract may be renewed by the delivery of a renewal receipt identifying the policy by number, date or otherwise, or a new premium note. R.S.O. 1970, c. 224, s. 119.

Form of  
contract

**123.** After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. R.S.O. 1970, c. 224, s. 120.

Mortgagees  
and other  
payees

**124.**—(1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him.

(2) The length of and manner of giving the notice under subsection (1) is the same as notice of cancellation to the insured under the statutory conditions in the contract. <sup>Form of notice</sup>  
R.S.O. 1970, c. 224, s. 121.

**125.**—(1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario and shall be printed on every policy with the heading “Statutory Conditions” and no variation or omission of or addition to any statutory condition is binding on the insured. <sup>Statutory conditions</sup>

(2) In this section, “policy” does not include interim receipts or binders. <sup>Interpretation</sup>

### STATUTORY CONDITIONS

#### Misrepresentation

1. If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

#### Property of Others

2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

#### Change of Interest

3. The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy Act* (Canada) or change of title by succession, by operation of law, or by death.

#### Material Change

4. Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

#### Termination

- 5.—(1) This contract may be terminated,
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
  - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but, in no event, shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

(5) The fifteen days mentioned in clause (1) (a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**Requirements  
After Loss**

6.—(1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,

- (a) forthwith give notice thereof in writing to the insurer;
- (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,
  - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
  - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
  - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
  - (iv) showing the amount of other insurances and the names of other insurers,
  - (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
  - (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,
  - (vii) showing the place where the property insured was at the time of loss;
- (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;
- (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (1) (c) and (d) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

**Fraud**

7. Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

**Who may  
give notice  
and proof**

8. Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**Salvage**

9.—(1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute *pro rata* towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

**Entry, Control,  
Abandonment**

10. After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

**Appraisal**

11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**When Loss  
Payable**

12. The loss is payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

**Replacement**

13.—(1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

**Action**

14. Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage occurs.

**Notice**

15. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in the contract by letter personally delivered to him or by

registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

R.S.O. 1970, c. 224, s. 122.

Limitation  
of liability  
clause

**126.** A contract containing,

- (a) a deductible clause; or
- (b) a co-insurance, average or similar clause; or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped upon its face in red ink the words "The policy contains a clause that may limit the amount payable", failing which the clause is not binding upon the insured. R.S.O. 1970, c. 224, s. 123.

Rateable  
contribution

**127.**—(1) Where on the happening of any loss or damage to property insured there is in force more than one contract covering the same interest, each of the insurers under the respective contracts is liable to the insured for its rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

Effect of  
policy may  
not be  
postponed

(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy will not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

Certain  
restrictions  
valid

(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 126 or any contract condition limiting or prohibiting the having or placing of other insurance.

Ascertain-  
ment of  
rateable  
proportions

(4) Nothing in subsection (1) affects the operation of any deductible clause and,

- (a) where one contract contains a deductible, the *pro rata* proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and

- (b) where more than one contract contains a deductible, the *pro rata* proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be pro rated among the insurers with deductibles and these pro rated amounts shall affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) shall be construed to have <sup>Idem</sup> the effect of increasing the *pro rata* contribution of an insurer under a contract that is not subject to a deductible clause.

(6) Notwithstanding subsection (1), insurance on identified <sup>Insurance on identified articles</sup> articles is a first loss insurance as against all other insurance. R.S.O. 1970, c. 224, s. 124.

**128. Where a contract,**

<sup>Special stipulations</sup>

- (a) excludes any loss that would otherwise fall within the coverage prescribed by section 121; or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty is not binding upon the insured, if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried. R.S.O. 1970, c. 224, s. 125.

**129.—**(1) The insurer, upon making a payment or assuming <sup>Subrogation</sup> liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

(2) Where the net amount recovered, after deducting the <sup>Where amount recovered is not sufficient to indemnify</sup> costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively. R.S.O. 1970, c. 224, s. 126.

## PREMIUM NOTES AND ASSESSMENTS

Application  
of ss.  
131 to 147

**130.**—(1) Sections 131 to 147 apply only to mutual and cash-mutual fire insurance corporations and, except sections 132, 133 and 143, to mutual live stock and mutual weather insurance corporations that carry on business on the premium note plan or under the Fire Mutuals Guarantee Fund. R.S.O. 1970, c. 224, s. 127 (1); 1975, c. 88, s. 3 (1).

Application  
to Fire  
Mutuals  
Guarantee  
Fund

(2) Sections 132, 133, 134, 136, 137, 138, 139, 140 and 141 do not apply in respect of contracts of insurance to which the Fire Mutuals Guarantee Fund is applicable. 1975, c. 88, s. 3 (2).

Insurance  
on premium  
note plan

(3) No licensed insurer shall carry on, on the premium note plan or under the Fire Mutuals Guarantee Fund, any class of insurance other than fire, live stock and weather insurance, but a mutual insurance company incorporated for the purpose of undertaking contracts of fire insurance on the premium note plan, may also insure for the classes of insurance as specified in subsection 149 (13) of the *Corporations Act*. R.S.O. 1970, c. 224, s. 127 (2); 1971, c. 84, s. 6; 1975, c. 88, s. 3 (3).

R.S.O. 1980,  
c. 95

Application  
of ss. 131  
to 147

(4) Sections 131 to 147 apply only to contracts made in Ontario. R.S.O. 1970, c. 224, s. 127 (3).

Insurer  
may accept  
premium  
notes

**131.**—(1) The insurer may accept the premium note of the insured for insurance and may undertake contracts in consideration thereof and such notes are subject to cash payments and assessments for the losses, expenses and reserve of the insurer in the manner hereinafter provided.

Form of  
note

(2) The premium note shall be in the form prescribed by Schedule A.

Premium  
note

(3) Nothing but the notice provided by section 144 shall be written upon the same paper upon which the premium note is written, and a contravention of this section renders the premium note void. R.S.O. 1970, c. 224, s. 128.

Minimum  
rates

**132.** The rate to be charged or taken by way of premium note for insuring agricultural property, other than brick, stone or concrete dwellings, shall be not less than \$3 for three years for every \$100 of insurance, and the minimum rate upon other property may be increased or decreased relatively with the risk according to the nature of the property. R.S.O. 1970, c. 224, s. 129.

Minimum  
cash  
payment

**133.**—(1) Subject to subsection (3), the directors shall require at the time of the application for insurance of agricultural property, other than brick, stone or concrete

dwellings, a cash payment on the premium note of not less than 80 cents for three years for every \$100 of insurance and may require a larger or smaller cash payment at the time of the application for the insurance of other property, but not more than 60 per cent of any premium note shall be paid in cash at the time of the application for or of effecting the insurance.

(2) The cash payment required at the time of the application for insurance of agricultural property, other than brick, stone or concrete dwellings, may be reduced with the approval of the Superintendent by the directors when and so long as the surplus of the insurer is not less than 25 cents for every \$100 of the total net amount at risk. Reduction by directors

(3) Instead of requiring the cash payment to be paid in full at the time of the application for insurance, the directors may make the cash payment payable in three equal annual instalments of not less than 30 cents each for every \$100 of insurance on agricultural property, other than brick, stone or concrete dwellings, and *pro rata* on other property, the first of which shall be due and payable at the time of the application for insurance and the remaining instalments shall be respectively due and payable on the first day of each subsequent year of the term of insurance. Payment by annual instalments

(4) In this section and in section 134, "surplus" means the assets of the insurer other than the premium note residue after deducting therefrom all liabilities of the insurer (other than contingent liabilities on unmatured contracts) and the proportion of cash payments and instalments thereof paid in advance applicable to unexpired policy contracts calculated as required by subsection 81 (5). R.S.O. 1970, c. 224, s. 130. Interpretation

**134.**—(1) The directors may declare a refund from surplus, Refund from surplus

- (a) if on the effective date of the refund the net surplus of the insurer after deducting the total amount of the refund is, in terms of cents per hundred dollars of net insurance in force, not less than the amount set out in the following table, or, in the case of an insurer with less than \$2,000,000 of net insurance in force, such other amount as may be approved by the Superintendent;
- (b) if, except as hereinafter provided, the refund applies on all policies in force on the effective date thereof;

- (c) if the refund on each policy is in the same ratio to the total refund as the face value of the premium note is to the total face value of all premium notes in force at date of refund, or, that the refund on each policy is a fixed percentage of the annual instalment or of one-third of the cash payment for three years in advance, as the case may be; and
- (d) if the by-laws of the insurer require that refunds be payable only to members insured continuously in the insurer during the three years preceding the effective date of the refund.

TABLE

When the total net amount at risk is greater than \$125,000,000—	\$0.40
When the total net amount at risk is greater than 75,000,000—	.50
When the total net amount at risk is greater than 25,000,000—	.60
When the total net amount at risk is greater than 10,000,000—	.70
When the total net amount at risk is greater than 5,000,000—	.80
When the total net amount at risk is greater than 2,000,000—	1.00

Application  
of subs. (1)

(2) Subsection (1) does not apply to cash-mutual fire insurance corporations, or to an insurer the surplus of which as defined by subsection 133 (4) exceeds 10 per cent of the total amount at risk.

Where subs.  
(1) to apply

(3) Subject to the exceptions in subsection (2), subsection (1) applies to any distribution of surplus to members, other than a distribution for the purposes of winding up or reinsurance of the insurer. R.S.O. 1970, c. 224, s. 131.

Written  
application  
required

**135.**—(1) No insurer shall make a contract on the premium note plan or to which the Fire Mutuals Guarantee Fund is applicable covering agricultural property for a term exceeding twelve months without a written application therefor signed by the applicant, or, in case of the absence of the applicant or his inability to make the application, by his agent, other than the agent of the insurer, or by a person having an insurable interest in the property. R.S.O. 1970, c. 224, s. 132 (1); 1975, c. 88, s. 4.

Contents of  
application

(2) Every written application shall set forth the name, address and occupation of the applicant, the description, location and occupancy of the property to be insured, its value, particulars of any mortgage, lien or other encumbrance thereon, the purpose for which and the location in which any movable property is deposited or used, particulars of any claims made by the applicant in respect of insured loss or damage by fire, whether any insurer has cancelled any

fire insurance policy of or refused fire insurance to the applicant, particulars of any other fire insurance on the same property, and such other information as the insurer or the Superintendent may require. R.S.O. 1970, c. 224, s. 132 (2).

**136.**—(1) The cash payment or instalments thereof re- Assessments  
quired to be paid by section 133 at the time of the applica-  
tion for insurance shall be applied in part payment of the  
premium note, and the premium note residue is subject to  
assessments by the directors, with the approval of the  
Superintendent, in such sums and at such times as they may  
determine for reserve and for losses and expenses incurred  
during the currency of the policies for which the notes were  
given.

(2) An assessment is due and payable within thirty days When due  
after notice stating the amount and date of the assessment  
has been given in the manner hereinafter provided.

(3) An assessment shall be fixed as a percentage of the How fixed  
face amount of the premium note, and all assessments are  
payable on the same date and at the same rate per cent.  
R.S.O. 1970, c. 224, s. 133.

**137.**—(1) Default in making the cash payment or any Penalty for  
instalment thereof within thirty days after notice of it default in  
becoming due or of its non-payment when due has been payments  
given in the manner hereinafter provided, or default in paying  
any assessment authorized by the directors within thirty  
days after notice has been given as required by subsection  
136 (2), unless the directors determine otherwise, renders the  
contract of insurance void as to all claims for loss occurring during  
the time of default, but, subject thereto, the contract is revived if  
and when the cash payment or instalments thereof or the assess-  
ment so in default has been paid.

(2) Nothing in this Act relieves the insured of his liability Liability of  
to pay the cash payment and all assessments lawfully insured  
imposed by the directors during the full term of the policy  
or within forty days thereafter in respect of which the  
prescribed notice has been given or prejudices the right of  
the insurer after giving the required notice to sue for and  
recover the same with the costs of the suit.

(3) Where an action is brought to recover an assessment, Evidence of  
the certificate of the secretary of the insurer specifying the amount due  
assessment and the amount due on the note in respect of insurer  
such assessment is admissible in evidence as *prima facie* proof  
thereof in any court. R.S.O. 1970, c. 224, s. 134.

## Notice

**138.**—(1) The notices required to be given by sections 136 and 137 are sufficient if mailed to the person by whom the cash payment, or any instalment thereof, or the assessment, as the case may be, is payable, addressed to his post office address given in the original application, or otherwise given in writing, to the insurer, and, if it states the register number of the contract, the time when, and the place where, the amount is payable.

Notice to  
contain  
s. 137 (1)

(2) Subsection 137 (1) shall be printed in full upon the face of all such notices.

Notice to  
mortgagee

(3) If the property insured has been mortgaged and the insurer has assented to the mortgage, the notices respecting assessments and cash payments required to be mailed to the payee shall also be mailed to the mortgagee if his post office address is known to the insurer, and, if notice is not so given, the contract shall be deemed to be valid and subsisting as to the interest of the mortgagee. R.S.O. 1970, c. 224, s. 135.

Return of  
premium  
note on  
termination  
of insurance

**139.** Forty days after the expiration of the term of insurance or after the insured has sustained a total loss in respect of the property insured, the premium note given for the term is void except as to the cash payment or instalments thereof remaining unpaid and as to lawful assessments of which the prescribed written notice has been given to the maker of the premium note during the currency of the policy or within such period of forty days, and on the expiration of such period the premium note shall upon application therefor be surrendered to the maker, if all liabilities with which the premium note is chargeable have been paid. R.S.O. 1970, c. 224, s. 136.

Assessments  
may be  
retained out  
of insurance  
money

**140.** If there is a loss on property insured, the directors may retain out of the insurance money the cash payment or any instalments thereof, or any lawful assessment due and payable and remaining unpaid by the insured. R.S.O. 1970, c. 224, s. 137.

## Reinsurance

**141.** The directors may reinsure any risk undertaken on the premium note plan with any other insurer of the same class, and may authorize the execution of a premium note by the proper officer of the insurer, and the insurer in respect of such reinsurance contract has the same rights and is subject to the same obligations as a member of the reinsurer. R.S.O. 1970, c. 224, s. 138.

General  
reinsurance  
agreement

**142.**—(1) Subject to the approval of the Superintendent, the directors of an insurer licensed to transact insurance on the premium note plan or to which the Fire Mutuals

Guarantee Fund is applicable may enter into a general reinsurance agreement with any other insurer of the same class for the reinsurance of risks on such terms and conditions as are agreed upon. R.S.O. 1970, c. 224, s. 139 (1); 1975, c. 88, s. 5.

(2) Such agreement may dispense with the issue of policies and the execution of premium notes and may provide for reinsurance on the cash plan.

Policies  
and notes  
unnecessary

(3) Such agreement shall be in writing and under the corporate seals of the parties thereto. R.S.O. 1970, c. 224, s. 139 (2, 3).

Writing  
and seals

(4) A mutual insurance corporation incorporated under subsection 148 (3) of the *Corporations Act* shall be deemed to be an insurer of the same class under subsection (1) and under subsection 143 (4). R.S.O. 1970, c. 224, s. 139 (4); 1971, c. 84, s. 7.

Mutual  
insurance  
corporations  
R.S.O. 1980,  
c. 95

**143.**—(1) Subject to subsection (4), no insurer shall undertake any risk on the premium note plan or under a contract to which the Fire Mutuals Guarantee Fund is applicable that is subject to the hazard of a single fire for an amount greater than that allowed by the following table unless the risk is reinsured to an amount sufficient to reduce the net liability of the insurer to the amount authorized in the table:

Compulsory  
reinsurance

TABLE

Where the total amount at risk is less than \$5,000,000 . . . . .	\$4,000
Where the total amount at risk is \$5,000,000 or more but less than \$10,000,000 . . . . .	6,000
Where the total amount at risk is \$10,000,000 or more . . . . .	8,000

R.S.O. 1970, c. 224, s. 140 (1); 1975, c. 88, s. 6 (1).

(2) A risk subject to the hazard of a single fire shall be deemed to include, in the case of agricultural property, other than brick, stone or concrete dwellings, the total amount at risk on barns, outbuildings, contents, machinery, and all other items in connection therewith except live stock or a dwelling distant more than 80 feet from any other insured farm building, and in all other cases the total amount at risk on buildings or their contents where the buildings are distant less than 80 feet from each other.

Meaning  
of risk  
subject to  
hazard of  
single fire

(3) Where an insurer fails to reinsure a risk that is subject to the hazard of a single fire and for an amount greater than that allowed by the table set out in subsection (1), the

Penalty for  
failure to  
reinsure

Minister, on the report of the Superintendent, may suspend or cancel the licence of the insurer. R.S.O. 1970, c. 224, s. 140, (2, 3).

Exception  
to subss.  
(1), (5)

(4) An insurer may undertake risks on the premium note plan or under a contract to which the Fire Mutuals Guarantee Fund is applicable in excess of the amounts authorized by subsections (1) and (5) where it has entered into a general reinsurance agreement with other insurers of the same class, approved by the Superintendent, whereby each insurer party to the agreement is provided with reinsurance on a plan covering in whole or in part the amount of losses in excess of its normal loss ratio as determined under the provisions of the plan. R.S.O. 1970, c. 224, s. 140 (4); 1973, c. 124, s. 13 (1); 1975, c. 88, s. 6 (2).

Reinsurance  
re weather  
insurance

(5) Subject to subsection (4), no mutual insurance corporation incorporated to transact fire insurance on the premium note plan or under the Fire Mutuals Guarantee Fund shall undertake contracts of weather insurance unless all liability for loss in excess of \$100 on any risk covered by weather insurance is reinsured with a licensed weather company or a mutual insurance corporation incorporated pursuant to subsection 148 (3) of the *Corporations Act*. R.S.O. 1970, c. 224, s. 140 (5); 1971, c. 84, s. 8; 1973, c. 124, s. 13 (2); 1975, c. 88, s. 6 (3).

R.S.O. 1980,  
c. 95

Idem

(6) The reinsurance requirement under subsection (5) with respect to weather insurance does not apply to a mutual fire insurance corporation without guarantee capital stock that is restricted by its licence to insuring the plant and stock of millers and grain dealers used in connection with the grain trade, and the dwellings, outbuildings and contents thereof owned by such millers and grain dealers or their employees, against fire and any other class or classes of insurance set out in section 27.

Rights of  
insured

(7) Nothing in this section renders a contract invalid as against the insured.

Exception

(8) This section does not apply to an insurer that is restricted by its licence to the insurance against fire and lightning of buildings, plant and stock of millers and grain dealers used in connection with the grain trade and the dwellings, outbuildings and contents thereof owned by such millers and grain dealers or their employees when and so long as its surplus as defined by subsection 133 (4) exceeds 10 per cent of the total amount at risk. R.S.O. 1970, c. 224, s. 140 (6, 8).

**144.** An action upon a premium note or for an assessment thereon cognizable in a small claims court may be entered, tried and determined in the court for the division in which the head office or an agency of the insurer is located, where and where only within the body of the note, or across the face thereof, there was at the time of the making of it printed in conspicuous type, or in ink of a colour different from any other in or on the note, the words following: "An action that may be brought or commenced in a small claims court in respect or on account of this note, or any sum to be assessed thereon, may be brought and commenced against the maker hereof in the small claims court for the division in which the head office or an agency of the insurer is located". R.S.O. 1970, c. 224, s. 141. Actions in small claims court

**145.** A premium note does not create a lien upon the land on which the insured property is situate. R.S.O. 1970, c. 224, s. 142. Note not to be a lien on land

**146.—(1)** The Superintendent may approve the terms of an agreement to establish and maintain a fund to be held in trust by a trust company registered under the *Loan and Trust Corporations Act*, such fund to be known as the Fire Fire Mutuals Guarantee Fund R.S.O. 1980, c. 249

(2) Subject to the approval of the Superintendent, an insurer licensed to transact business on the premium note plan, together with other insurers of the same class and The Farm Mutual Reinsurance Plan, Inc., may enter into the agreement. Parties to agreement for Fund

(3) The assets of the Fire Mutuals Guarantee Fund may be used as directed by a board of trustees established under the agreement, with the approval of the Superintendent, for the purpose of satisfying claims by policyholders and third parties that cannot be met by the assets of an insurer who is a party to the agreement. Purposes of Fund

(4) The assets of the Fund shall, Assets of Fund

(a) be maintained at no less than a book value of \$1,000,000 including the value of any assessments made to restore the book value of \$1,000,000, or such further amount as may be specified from time to time by the Superintendent;

(b) be maintained or increased by assessments on parties to the agreement on the basis set out in the agreement referred to in subsection (1);

(c) be an authorized investment within the meaning of subsection 81 (8) and the value to be included by each licensed insurer shall be proportional to its contribution to the trust and shall be subject to examination by the Superintendent in the same manner as the other assets and property of licensed insurers;

(d) be invested and valued in the same manner and be subject to the same restrictions as the assets of a mutual fire insurance corporation carrying on business on the premium note plan.

Relief  
from  
assessment

(5) No assessment referred to in clause (4)(b) shall be paid by an insurer if its effect would be to reduce the surplus of that insurer below the minimum amount specified by the Superintendent, and such a waiver of an assessment shall not be cause for the insurer's expulsion from the Fund.

Interest  
of Super-  
intendent  
in Fund

(6) The Superintendent shall be deemed to have an interest in the Fund as representative of all persons who may be claimants against insurers that are parties to the agreement and the trustees shall from time to time furnish the Superintendent with such information and accounts with respect to the Fund as the Superintendent may require.

Withdrawal  
from  
agreement

(7) The Superintendent may permit the withdrawal from the trust agreement of an insurer upon terms and conditions or, where an insurer is in default of payment of its assessment under the agreement, the Superintendent may withdraw his approval given under subsection (2).

Ceasing to  
issue  
contracts  
on premium  
note plan

(8) An insurer that becomes a party to the agreement referred to in subsection (1) shall, except with the approval of the Superintendent, cease to undertake contracts of insurance or renew existing contracts of insurance on the premium note plan.

Application  
of Act

(9) All parties to the agreement and their officers and directors, shall be deemed to be persons engaged in the business of insurance for the purposes of this Act and the regulations and any contravention of the trust agreement constitutes an offence.

Passing  
of accounts

(10) An account filed with the Superintendent under subsection (6), except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and the trustees' administration thereof, unless the Superintendent, within six months

of the date upon which the account is filed with him, requires in writing that such account be filed and passed before a judge of the surrogate court of the county or district in which the account is being administered.

(11) The provisions of the *Surrogate Courts Act* and the rules made thereunder and of the *Trustee Act* with respect to the passing of accounts of the trustees apply, with necessary modifications, to the passing of accounts under subsection (10). 1975, c. 88, s. 7.

Application of  
R.S.O. 1980,  
cc. 491, 512

**147.**—(1) No execution shall issue against a mutual or cash-mutual insurer upon a judgment until after the expiration of sixty days from the recovery thereof, but this section does not apply to a judgment recovered on a contract of insurance where more than 60 per cent of the premium or premium note was paid in cash at the time of the insurance or the application therefor.

When  
execution  
upon  
judgment  
against  
insurer

(2) A judge of the Supreme Court or the master after the recovery of a judgment against the insurer, upon the application of the judgment creditor and upon notice to the insurer, may inquire into the facts, and, if he finds that more than 60 per cent of the premium note was paid in cash at the time of the insurance or upon the application therefor, he may direct that execution be issued forthwith upon such judgment. R.S.O. 1970, c. 224, s. 144.

When order  
may be  
made for  
issue

## PART V

### LIFE INSURANCE

#### INTERPRETATION

**148.** In this Part,

Interpre-  
tation

- (a) “application” means an application for insurance or for the reinstatement of insurance;
- (b) “beneficiary” means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;
- (c) “contract” means a contract of life insurance;
- (d) “court” means the Supreme Court or a judge thereof;

(e) "creditor's group insurance" means insurance effected by a creditor in respect of the lives of his debtors whereby the lives of the debtors are insured severally under a single contract;

(f) "declaration" means an instrument signed by the insured,

(i) with respect to which an endorsement is made on the policy, or

(ii) that identifies the contract, or

(iii) that describes the insurance or insurance fund or a part thereof,

in which he designates, or alters or revokes the designation of, his personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

(g) "family insurance" means insurance whereby the lives of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

(h) "group insurance" means insurance, other than creditor's group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

(i) "group life insured" means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, him;

(j) "instrument" includes a will;

(k) "insurance" means life insurance;

(l) "insured",

(i) in the case of group insurance, means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and

(ii) in all other cases, means the person who makes a contract with an insurer;

(m) "will" includes a codicil. R.S.O. 1970, c. 224, s. 145; 1980, c. 55, s. 2.

#### APPLICATION OF PART

**149.**—(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in Ontario on or after the 1st day of July, 1962, and, subject to subsections (2) and (3), applies to a contract made in Ontario before that day. Application

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately prior to the 1st day of July, 1962 are those provided in Part V of *The Insurance Act* as it existed immediately prior to that day. Beneficiary  
for value  
  
R.S.O. 1960,  
c. 190

(3) Where the person who would have been entitled to the payment of insurance money, if the money had become payable immediately prior to the 1st day of July, 1962, was a preferred beneficiary within the meaning of Part V of *The Insurance Act* as it existed immediately prior to that day, the insured may not, except in accordance with that Part, Preferred  
beneficiary

(a) alter or revoke the designation of a beneficiary; or

(b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part. R.S.O. 1970, c. 224, s. 146.

**150.** In the case of a contract of group insurance made with an insurer authorized to transact insurance in Ontario at the time the contract was made, this Part applies in determining, Group  
insurance

(a) the rights and status of beneficiaries if the group life insured was resident in Ontario at the time he became insured; and

- (b) the rights and obligations of the group life insured if he was resident in Ontario at the time he became insured. R.S.O. 1970, c. 224, s. 147.

#### ISSUANCE OF POLICY AND CONTENTS THEREOF

Insurer  
to issue  
policy

**151.**—(1) An insurer entering into a contract shall issue a policy.

Documents  
forming  
contract

(2) Subject to subsection (3), the provisions in,

- (a) the application; and
- (b) the policy; and
- (c) any document attached to the policy when issued; and
- (d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

Contract of  
fraternal  
society

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

Copy of  
application

(4) An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application. R.S.O. 1970, c. 224, s. 148.

Exceptions

**152.**—(1) This section does not apply to a contract,

- (a) of group insurance; or
- (b) of creditor's group insurance; or
- (c) made by a fraternal society.

Contents  
of policy

(2) An insurer shall set forth the following particulars in the policy:

1. The name or a sufficient description of the insured and of the person whose life is insured.

2. The amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable.
  3. The amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid.
  4. Whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.
  5. The conditions upon which the contract may be reinstated if it lapses.
  6. The options, if any,
    - (a) of surrendering the contract for cash;
    - (b) of obtaining a loan or an advance payment of the insurance money; and
    - (c) of obtaining paid-up or extended insurance.
- R.S.O. 1970, c. 224, s. 149.

**153.** In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth the following particulars in the policy: Contents  
of group  
policy

1. The name or a sufficient description of the insured.
2. The method of determining the persons whose lives are insured.
3. The amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable.
4. The period of grace, if any, within which the premium may be paid.
5. Whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer. R.S.O. 1970, c. 224, s. 150.

**154.** In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set forth the following particulars: Contents  
of group  
certificate

1. The name of the insurer and an identification of the contract.
2. The amount, or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, him.
3. The circumstances in which the insurance terminates and the rights, if any, upon such termination, of the group life insured or of any person whose life is insured under the contract as a person dependent upon, or related to, him. R.S.O. 1970, c. 224, s. 151.

#### CONDITIONS GOVERNING FORMATION OF CONTRACT

Insurable  
interest

**155.**—(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

Exceptions

(2) A contract is not void for lack of insurable interest,

(a) if it is a contract of group insurance; or

(b) if the person whose life is insured has consented in writing to the insurance being placed on his life.

Consent  
of minor

(3) Where the person whose life is insured is under the age of sixteen years, consent to insurance being placed on his life may be given by one of his parents or by a person standing *in loco parentis* to him. R.S.O. 1970, c. 224, s. 152.

Insurable  
interest,  
defined

**156.** Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in his own life and in the life of,

(a) his child or grandchild;

(b) his spouse;

(c) any person upon whom he is wholly or in part dependent, for, or from whom he is receiving, support or education;

(d) his employee; and

- (e) any person in the duration of whose life he has a pecuniary interest. R.S.O. 1970, c. 224, s. 153.

**157.**—(1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless, Contract taking effect

- (a) the policy is delivered to an insured, his assign or agent, or to a beneficiary;
- (b) payment of the first premium is made to the insurer or its authorized agent; and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1) (a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured. R.S.O. 1970, c. 224, s. 154. Delivery to agent

**158.**—(1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid. Default in paying premium

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter. R.S.O. 1970, c. 224, s. 155. Payment by registered letter

**159.**—(1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay. Who may pay premium

(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of, Period of grace

- (a) thirty days or, in the case of an industrial contract, twenty-eight days from and excluding the day on which the premium is due; or

- (b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

Contract in  
force during  
grace  
period

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding 6 per cent per annum, and the balance, if any, of the current year's premium, may be deducted from the insurance money. R.S.O. 1970, c. 224, s. 156.

Duty to  
disclose

**160.**—(1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

Failure to  
disclose

(2) Subject to section 161, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S.O. 1970, c. 224, s. 157.

Exceptions

**161.**—(1) This section does not apply to a misstatement of age or to disability insurance.

Incontest-  
ability

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 160 does not, in the absence of fraud, render the contract voidable.

Incontest-  
ability in  
group  
insurance

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable. R.S.O. 1970, c. 224, s. 158.

Non-  
disclosure  
by insurer

**162.** Where an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured, but, in the absence of fraud, the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years. R.S.O. 1970, c. 224, s. 159.

**163.**—(1) This section does not apply to a contract of group insurance or of creditor's group insurance. Exceptions

(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age. Misstatement of age

(3) Where a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within sixty days after it discovers the error. R.S.O. 1970, c. 224, s. 160. Limitation of insurable age

**164.** In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable, and the provisions, if any, of the contract with respect to age or misstatement of age apply. R.S.O. 1970, c. 224, s. 161. Misstatement of age in group insurance

**165.**—(1) Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable. Effect of suicide

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement. R.S.O. 1970, c. 224, s. 162. Suicide and reinstatement

**166.**—(1) This section does not apply to a contract of group insurance or to a contract made by a fraternal society. Exceptions

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time he, Reinstatement

- (a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding 6 per cent per annum, compounded annually; and

(b) produces,

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured,

the insurer shall reinstate the contract.

**Exceptions**

(3) Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

**Application of other sections**

(4) Sections 160 and 161 apply with necessary modifications to reinstatement of a contract. R.S.O. 1970, c. 224, s. 163.

DESIGNATION OF BENEFICIARIES

**Designation of beneficiary**

**167.**—(1) An insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money.

**Change in designation**

(2) Subject to section 168, the insured may from time to time alter or revoke the designation by a declaration.

**Meaning of "heirs", etc.**

(3) A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured. R.S.O. 1970, c. 224, s. 164.

**Designation of beneficiary irrevocably**

**168.**—(1) An insured may in a contract, or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of his creditors and does not form part of his estate.

**Attempted designation**

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable. R.S.O. 1970, c. 224, s. 165.

**169.**—(1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will. Designation  
in invalid  
will

(2) Notwithstanding the *Succession Law Reform Act*, a designation in a will is of no effect against a designation made later than the making of the will. Priorities  
R.S.O. 1980,  
c. 488

(3) Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked. Revocation

(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument is valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked. R.S.O. 1970, c. 224, s. 166. Idem

**170.**—(1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration. Trustee for  
beneficiary

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment. R.S.O. 1970, c. 224, s. 167. Payment  
to trustee

**171.**—(1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable, Beneficiary  
predeceasing  
life insured

(a) to the surviving beneficiary; or

(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or

(c) if there is no surviving beneficiary, to the insured or his personal representative.

(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares. R.S.O. 1970, c. 224, s. 168. Several  
beneficiaries

**172.** A beneficiary may enforce for his own benefit, and a trustee appointed pursuant to section 170 may enforce as trustee, the payment of insurance money made payable to him in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any Right  
to sue

defence that it could have set up against the insured or his personal representative. R.S.O. 1970, c. 224, s. 169.

Insurance  
money  
free from  
creditors

**173.**—(1) Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Contract  
exempt  
from seizure

(2) While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure. R.S.O. 1970, c. 224, s. 170.

#### DEALINGS WITH CONTRACT DURING LIFETIME OF INSURED

Insured  
dealing with  
contract

**174.** Where a beneficiary,

(a) is not designated irrevocably; or

(b) is designated irrevocably but has attained the age of eighteen years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part or as may be agreed upon with the insurer. R.S.O. 1970, c. 224, s. 171; 1972, c. 66, s. 5.

Insured  
entitled to  
dividends

**175.**—(1) Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

Insurer  
may use  
dividends

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force. R.S.O. 1970, c. 224, s. 172.

Transfer of  
ownership  
R.S.O. 1980,  
c. 488

**176.**—(1) Notwithstanding the *Succession Law Reform Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his estate; and

- (b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with necessary modifications, to each of such persons and to his rights and interests in the contract. Successive owners

(3) Notwithstanding any nomination made pursuant to this section, the insured may, prior to his death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer. Saving R.S.O. 1970, c. 224, s. 173.

**177.**—(1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against, Interest of assignee

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 168 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee. Effect on beneficiary's rights

(3) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured. Assignee deemed to be insured

(4) A provision in a contract to the effect that the rights or interests of the insured, or, in the case of group insurance, the group life insured, are not assignable is valid. Prohibition against assignment R.S.O. 1970, c. 224, s. 174.

Group life  
insured,  
enforcing  
rights

**178.** A group life insured may in his own name enforce a right given to him under a contract, subject to any defence available to the insurer against him or against the insured. R.S.O. 1970, c. 224, s. 175.

#### MINORS

Capacity  
of minors

**179.** Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

- (a) to make an enforceable contract; and
- (b) in respect of a contract. R.S.O. 1970, c. 224, s. 176; 1972, c. 66, s. 6.

#### PROCEEDINGS UNDER CONTRACT

Proof  
of claim

**180.** Where an insurer receives sufficient evidence of,

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto. R.S.O. 1970, c. 224, s. 178.

Place of  
payment

**181.**—(1) Subject to subsection (4), insurance money is payable in Ontario.

Dollars

(2) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars.

Payment  
outside  
Ontario

(3) Where a person entitled to receive insurance money is not domiciled in Ontario, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on his behalf by the law of the domicile of the payee.

Exception  
for group  
insurance

(4) In the case of a contract of group insurance, insurance money is payable in the province or territory of Canada in which the group life insured was resident at the time he became insured. R.S.O. 1970, c. 224, s. 179.

**182.** Notwithstanding where a contract was made, an action on it may be brought in a court by a resident of Ontario if the insurer was authorized to transact insurance in Ontario at the time the contract was made or at the time the action is brought. R.S.O. 1970, c. 224, s. 180.

Action in  
Ontario

**183.**—(1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than one year after the furnishing of the evidence required by section 180 or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

Limitation  
of action

(2) Where a declaration has been made under section 186, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than one year after the date of the declaration. R.S.O. 1970, c. 224, s. 181.

Exception

**184.**—(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Documents  
affecting  
title

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer. R.S.O. 1970, c. 224, s. 182.

Saving

**185.** Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 180 and there is no other question in issue except a question under section 186, the insurer or the claimant may, before or after action is brought and upon least thirty days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence. R.S.O. 1970, c. 224, s. 183.

Declaration  
as to  
sufficiency  
of proof

**186.** Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his not having been heard of for seven years and there is no other question in issue except a question under section 185, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the

Declaration  
as to  
presumption  
of death

court for a declaration as to presumption of the death and the court may make the declaration. R.S.O. 1970, c. 224, s. 184.

Court  
may make  
order

**187.**—(1) Upon making a declaration under section 185 or 186, the court may make such order respecting the payment of the insurance money and respecting costs as it deems just and, subject to section 189, a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

Payment  
under  
order

(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid. R.S.O. 1970, c. 224, s. 185.

Stay of  
proceedings

**188.** Unless the court otherwise orders, an application made under section 185 or 186 operates as a stay of any pending action with respect to the insurance money. R.S.O. 1970, c. 224, s. 186.

Appeal

**189.** An appeal lies to the Divisional Court from any declaration, direction or order made under section 185, section 186 or subsection 187 (1). R.S.O. 1970, c. 224, s. 187.

Power  
of court

**190.** Where the court finds that the evidence furnished under section 180 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs. R.S.O. 1970, c. 224, s. 188.

Payment  
into court

**191.** Where an insurer admits liability for insurance money and it appears to the insurer that,

- (a) there are adverse claimants; or
- (b) the whereabouts of a person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly. R.S.O. 1970, c. 224, s. 189.

**192.** Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 171 (1) as if the beneficiary had predeceased the person whose life is insured. R.S.O. 1970, c. 224, s. 190. Simultaneous deaths

**193.**—(1) Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or his children who are minors. Insurance money payable in instalments

(2) A court may, upon the application of a beneficiary and upon at least ten days notice, declare that in view of special circumstances, Commutation by beneficiary

(a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or

(b) the beneficiary may alienate or assign his interest in the insurance money.

(3) After the death of the beneficiary, his personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary. Commutation after death of beneficiary

(4) In this section, “instalments” includes insurance money held by the insurer under section 194. R.S.O. 1970, c. 224, s. 191. Interpretation

**194.**—(1) An insurer may hold insurance money, Insurer holding insurance money

(a) subject to the order of an insured or a beneficiary; or

(b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

**Exception**

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing. R.S.O. 1970, c. 224, s. 192.

**Court may order payment**

**195.** Where an insurer does not within thirty days after receipt of the evidence required by section 180 pay the insurance money to some person competent to receive it or into court, the court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid. R.S.O. 1970, c. 224, s. 193.

**Costs**

**196.** The court may fix without taxation the costs incurred in connection with an application or order made under section 191 or 195, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just. R.S.O. 1970, c. 224, s. 194.

**Where beneficiary a minor**

**197.**—(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge therefor, who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable pay the money, less the applicable costs mentioned in subsection (2), into court to the credit of the minor.

**Costs**

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

**Procedure**

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and, upon such payment being made, the insurer shall forthwith notify the Official Guardian and deliver to him a copy of the affidavit. R.S.O. 1970, c. 224, s. 195.

**Beneficiary under disability**

**198.** Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representa-

tive and any such payment discharges the insurer to the extent of the amount paid. R.S.O. 1970, c. 224, s. 196.

#### MISCELLANEOUS PROVISIONS

**199.** No officer, agent or employee of an insurer and no person soliciting insurance, whether or not he is an agent of the insurer, shall, to the prejudice of the insured, be deemed to be the agent of the insured in respect of any question arising out of a contract. R.S.O. 1970, c. 224, s. 197.

Presump-  
tion against  
agency

**200.** An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money. R.S.O. 1970, c. 224, s. 198.

Insurer  
giving  
information

### PART VI

#### AUTOMOBILE INSURANCE

**201.** In this Part,

Interpre-  
tation

- (a) "contract" means a contract of automobile insurance;
- (b) "insured" means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in subsection 232 (1) and subsection 233 (1), whether described therein as an insured person or not. R.S.O. 1970, c. 224, s. 199; 1971, c. 84, s. 10.

**202.—**(1) This Part does not apply to contracts insuring only against,

Application  
of Part

- (a) loss of or damage to an automobile while in or on described premises;
- (b) loss of or damage to property carried in or upon an automobile; or
- (c) liability for loss of or damage to property carried in or upon an automobile.

(2) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the *Highway Traffic Act* unless it is insured

Idem

R.S.O. 1980,  
c. 198

under a contract evidenced by a form of policy approved under this Part.

Idem

(3) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile. R.S.O. 1970, c. 224, s. 200.

#### APPROVAL OF FORMS

Approval of  
forms by  
Superin-  
tendent

**203.**—(1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

Insurer  
requiring  
additional  
information

(2) An insurer may require additional information in an approved application form, but such additional information does not constitute part of the application for the purposes of section 206.

Approval of  
policies in  
special cases

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

Approval of  
extensions

(4) The Superintendent may, if he considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

Condition  
approval of  
extension

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement. R.S.O. 1970, c. 224, s. 201 (1-5).

Standard  
owner's  
policy

(6) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general, and which, for the purposes of section 205, shall be the standard owner's policy.

Publication

(7) Where the Superintendent approves the form referred to in subsection (6), he shall cause a copy of that form to be published in

*The Ontario Gazette* but it is not necessary for him to publish in *The Ontario Gazette* endorsement forms approved for use with the standard owner's policy. 1971, c. 84, s. 11.

(8) The Superintendent may revoke an approval given under this section, and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification. Revocation of approval

(9) The Superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing or revoking an approval of a form. R.S.O. 1970, c. 224, s. 201 (6, 7). Reason for decision

#### APPLICATION AND POLICY

**204.** No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker shall act as the agent of an applicant for the purpose of signing an application for automobile insurance. R.S.O. 1970, c. 224, s. 202. Persons forbidden to act as agent

**205.—**(1) A copy of the written application, signed by the insured or his agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer. Copy of application in policy

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer. R.S.O. 1970, c. 224, s. 203 (1, 2). Policy issued where no signed application

(3) Subject to subsection (5), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract. R.S.O. 1970, c. 224, s. 203 (3); 1971, c. 84, s. 12 (1). Insured entitled to copy

(4) Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the Form of policy

application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy. R.S.O. 1970, c. 224, s. 203 (4).

Certificate  
of policy

(5) Where an insurer adopts the standard owner's policy, it may, instead of issuing the policy, issue a certificate in a form approved by the Superintendent which when issued is of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown thereon by the insurer and any endorsements issued concurrently therewith or subsequent thereto but, at the request of an insured at any time, the insurer shall provide a copy of the standard owner's policy wording as approved by the Superintendent.

Application

(6) Where a certificate is issued under subsection (5), subsection (8) of this section, and subsection 229 (2), apply with necessary modifications.

Proof of  
terms of  
policy

(7) Where an insurer issues a certificate under subsection (5), proof of the terms of the policy may be given by production of a copy of *The Ontario Gazette* containing the form of standard owner's policy approved by the Superintendent. 1971, c. 84, s. 12 (2).

Endorsement  
on forms

(8) Upon every application form and policy, there shall be printed or stamped in conspicuous type a copy of subsection 206 (1). R.S.O. 1970, c. 224, s. 203 (5).

Misrepresentation or  
violation of  
conditions  
renders claim  
invalid

**206.—**(1) Where,

(a) an applicant for a contract,

(i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or

(ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud; or

- (c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy. Use of application as defence

(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof. R.S.O. 1970, c. 224, s. 204. Idem

**207.**—(1) Subject to subsection 203 (2), section 208 and section 229, Statutory conditions

- (a) the conditions set forth in this section are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading "Statutory Conditions"; and
- (b) no variation or omission of or addition to a statutory condition is binding on the insured. R.S.O. 1970, c. 224, s. 205 (1).

(2) In this section, "policy" does not include an interim receipt or binder. Interpretation

### STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

**Material Change in Risk** 1.—(1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

**Prohibited  
Use by  
Insured**

2.—(1) The insured shall not drive or operate the automobile,

- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
- (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (d) for any illicit or prohibited trade or transportation; or
- (e) in any race or speed test.

**Prohibited  
Use by  
Others**

(2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

- (a) by any person,
  - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
  - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

**Requirements  
Where Loss  
or Damage to  
Persons or  
Property**

3.—(1) The insured shall,

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The insured shall not,
- (a) voluntarily assume any liability or settle any claim except at his own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

**Requirements  
Where Loss  
or Damage to  
Automobile**

4.—(1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

- (a) without the written consent of the insurer; or
- (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

**Examination  
of Insured**

(4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

**Insurer Liable  
for Cash Value  
of Automobile**

(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

**Repair or  
Replacement**

(6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost, with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

**No Abandon-  
ment; Salvage**

(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

**In Case of  
Disagreement**

(8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**Inspection of  
Automobile**

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

**Time and  
Manner of  
Payment of  
Insurance  
Money**

6.—(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subsection 4 (8), within fifteen days after the award is rendered by the appraisers.

**When Action  
May Be Brought**

(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

**Limitation of  
Actions**

(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss

or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

**Who May Give  
Notice and  
Proofs of Claim**

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**Termination**

8.—(1) This contract may be terminated,

(a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;

(b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

(5) The fifteen days mentioned in clause (1) (a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**Notice**

9. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

R.S.O. 1970, c. 224, s. 205 (2); 1972, c. 66, s. 8.

**208.**—(1) Except as otherwise provided in the contract, the statutory conditions set forth in section 207 do not apply to insurance coming within section 231, 232 or 233. Exceptions  
respecting  
statutory  
conditions

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition Idem

(3) in section 207 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Idem

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 in section 207 is not a part of the policy and may be omitted from the printing of the conditions in the policy. R.S.O. 1970, c. 224, s. 206.

#### MOTOR VEHICLE LIABILITY POLICIES

Coverage of  
owner's  
policy,  
specific  
automobile

**209.**—(1) Every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

(a) arising from the ownership, use or operation of any such automobile; and

(b) resulting from bodily injury to or the death of any person, and damage to property.

Idem,  
other  
automobiles

(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

Death of  
person  
named in  
owner's  
policy

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

1. The spouse of the deceased insured if residing in the same dwelling premises at the time of his death.

2. In respect of the described automobile, a newly-acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,

i. any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured,

ii. the personal representative of the deceased insured. R.S.O. 1970, c. 224, s. 207.

**210.** Every contract evidenced by a non-owner's policy<sup>Coverage of non-owner's policy</sup> insures the person named therein and such other person, if any, as is specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name; and
- (b) resulting from bodily injury to or the death of any person, and damage to property. R.S.O. 1970, c. 224, s. 208.

**211.** For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason<sup>Persons deemed not owners</sup> only that he has a lien on the automobile or has legal title to the automobile as security. R.S.O. 1970, c. 224, s. 209.

**212.** Insurance under sections 209 and 210 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and upon a vessel plying between ports of those countries. R.S.O. 1970, c. 224, s. 210. <sup>Territorial limits</sup>

**213.** Any person insured by but not named in a contract to which section 209 or 210 applies may recover indemnity<sup>Rights of unnamed insured</sup> in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.O. 1970, c. 224, s. 211.

**214.** Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall, <sup>Additional agreements</sup>

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are deemed expedient by the insurer;
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;

(c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and

(d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time. R.S.O. 1970, c. 224, s. 212.

Liability  
from  
ownership

**215.** Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile. R.S.O. 1970, c. 224, s. 213.

Idem

**216.** The insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable,

(a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee;

(b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by or in the care, custody or control of the insured. R.S.O. 1970, c. 224, s. 215.

Idem

**217.** Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus. R.S.O. 1970, c. 224, s. 216; 1973, c. 124, s. 14.

Idem

**218.—(1)** The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that it shall not be liable while,

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes or for purposes incidental thereto;
- (c) the automobile is used as a taxi-cab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire;
- (d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
- (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

(2) In clause (1) (b), "radioactive material" means,

Interpre-  
tation

- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;
- (b) radioactive waste material;
- (c) unused enriched nuclear fuel rods; or
- (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

(3) Clause (1) (a) does not include the use by an employee of his automobile on the business of his employer and for which he is paid. R.S.O. 1970, c. 224, s. 217 (1-3). Exception

(4) Clause (1) (c) does not include,

Certain  
rules  
excepted

- (a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;

- (b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;
- (c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;
- (d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer; or
- (e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program. R.S.O. 1970, c. 224, s. 217 (4); 1971, c. 84, s. 13.

Minimum  
liability  
under policy

**219.**—(1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

Priorities

(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190,000 over claims arising out of loss of or damage to property; and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$10,000 over claims arising out of bodily injury or death.

Minimum  
limits  
where  
separate  
limits  
designated

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$200,000, exclusive of interest and costs, against liability for loss of or damage to property. 1980, c. 155, s. 3.

Variation  
of limits

(4) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified

in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3). R.S.O. 1970, c. 224, s. 218 (4).

**220.**—(1) Every motor vehicle liability policy issued in Ontario shall provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory of Canada,

Stipulation  
in motor  
vehicle  
liability  
policy

- (a) the insurer shall be liable up to the minimum limits prescribed for that province or territory if those limits are higher than the limits prescribed by the policy;
- (b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory; and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

(2) A provision in a motor vehicle liability policy in accordance with clause (1) (c) is binding on the insured. R.S.O. 1970, c. 224, s. 219.

Power of  
attorney  
binding

**221.**—(1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

Excess  
insurance

(2) Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated. R.S.O. 1970, c. 224, s. 220.

Termination  
of excess  
insurance

**222.** Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor. R.S.O. 1970, c. 224, s. 221.

Agreement  
for partial  
payment of  
claim by  
insured

Interpre-  
tation

R.S.C. 1970,  
c. A-19

**223.**—(1) In this section, “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

Liability  
when  
nuclear  
energy  
contract also  
in force

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 219; and

(b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

When  
contract  
deemed  
in force

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted. R.S.O. 1970, c. 224, s. 222.

Advance  
payments  
and release  
by claimant

R.S.O. 1980,  
c. 152

**224.**—(1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or his personal representative of any claim that the person or his personal representative or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act* may have against the insured and the insurer.

Idem

(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to such payment, a release from the person or his personal representative or any other person to the extent of such payment.

(3) Where the person commences an action, the court shall adjudicate upon the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

Payment  
to be  
taken into  
account

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof. R.S.O. 1970, c. 224, s. 223.

Intention

**225.**—(1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause 214 (b) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Supreme Court, and the court shall give such directions as may appear proper with respect to the performance of the obligation.

Defence  
where more  
than one  
contract

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

Hearing

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

Order

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 214 in accordance with their respective liabilities for damages awarded against the insured. R.S.O. 1970, c. 224, s. 224.

Contribution

**226.**—(1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any province or territory of Canada against the insured, have the insurance money payable under

Application  
of insurance  
money under  
motor  
vehicle  
liability  
policy

the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

**Limitation**

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

**Other  
creditors  
excluded**

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided for by that contract.

**Insurer  
absolutely  
liable**

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by,

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the contract;
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract; or

R.S.C. 1970,  
c. C-34

- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or territory of Canada or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clause (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

**Section  
applicable  
to purported  
policy**

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies with necessary modifications to the instrument.

**Contribution  
among  
insurers**

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to

their respective liabilities, whether the contribution is rateably or by way of first loss or excess insurance, as the case may be, and the insured shall on demand furnish the insurer with particulars of all other insurance covering the subject-matter of the contract.

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1), and the insurer admits liability to pay the insurance money under the contract and the insurer considers that,

Payment  
into court

- (a) there are or may be other claimants; or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the court *ex parte* for an order for payment of the money into court, and the court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein. R.S.O. 1970, c. 224, s. 225 (1-8).

Effect of  
order

(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 218, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 219. 1972, c. 66, s. 9.

Defence to  
excess limits  
claim  
relating to  
s. 218  
coverage

(10) Where one or more contracts provide for coverage of a type mentioned in section 216 or 217, except as provided in subsection (12), the insurer may,

Defence  
where  
coverage  
under  
ss. 216, 217

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in section 219, except as provided in subsection (12), the insurer may,

Defence  
where excess  
limits

(a) with respect to the coverage in excess of those limits; and

(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Defence  
where  
vehicle used  
in business  
of carrying  
passengers

(12) Where a contract provides coverage of the type mentioned in clause 217 (a) in respect of an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, the insurer may,

(a) with respect to that type of coverage; and

(b) as against a claimant,

only avail itself of a defence that it is entitled to set up against the insured in respect of that part of the coverage, if any, that exceeds,

(c) the limits mentioned in section 219; or

(d) the minimum limits required for that type of coverage by or under any other Act,

whichever is the greater.

Insured's  
liability  
to reimburse  
insurer

(13) The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

Insurer may  
be made  
third party

(14) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

Rights of  
insurer

(15) Upon being made a third party, the insurer may,

(a) contest the liability of the insured to any party claiming against the insured;

(b) contest the amount of any claim made against the insured;

(c) deliver any pleadings in respect of the claim of any party claiming against the insured;

(d) have production and discovery from any party adverse in interest; and

(e) examine and cross-examine witnesses at the trial,

to the same extent as if it were a defendant in the action.

(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party. R.S.O. 1970, c. 224, s. 225 (10-16).

**227.**—(1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action. Insured to give notice of action

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor. R.S.O. 1970, c. 224, s. 226. Insured to disclose insurance

#### PHYSICAL DAMAGE COVER

**228.** Subject to subsection 203 (1), the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary. R.S.O. 1970, c. 224, s. 227. Stipulations in physical damage cover

**229.**—(1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only, Partial payment of loss clause

(a) an agreed portion of any loss that may be sustained;  
or

(b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(2) Where a clause is inserted in accordance with subsection (1), there shall be printed or stamped upon the face of the policy in conspicuous type the words: "This policy Stamping required

contains a partial payment of loss clause". R.S.O. 1970, c. 224, s. 228.

Claims to  
be adjusted  
with insured

**230.**—(1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

Exception

(2) Where notice is given or proof of loss is made by a person other than the insured, because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under statutory conditions 4 and 7 in section 207, the insurer may, notwithstanding subsection (1) but in any event not earlier than sixty days from delivery of the proof required under clause (c) of subcondition 4 (1), adjust and pay the claim to the other person having an interest indicated in the contract. R.S.O. 1970, c. 224, s. 229.

#### LIMITED ACCIDENT INSURANCES

Uninsured  
automobile  
coverage

**231.**—(1) Every contract evidenced by a motor vehicle liability policy shall provide for payment of all sums that,

- (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
- (b) any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
- (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

subject to the terms, conditions, provisions, exclusions and limits as are prescribed by the regulations.

(2) For the purposes of this section,

Interpre-  
tation

(a) "insured automobile" means the automobile as defined or described under the contract;

(b) "person insured under the contract" means,

(i) in respect of a claim for damage to the insured automobile, the owner of the automobile,

(ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,

(iii) in respect of a claim for bodily injuries or death,

(A) any person while an occupant of the insured automobile,

(B) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either,

1. while an occupant of an uninsured automobile, or

2. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,

(C) if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is furnished, and, if residing in the same dwelling premises as such person, his or her spouse and any dependent relative of the person or the spouse,

1. while an occupant of an uninsured automobile, or

2. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,

where such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

(c) "unidentified automobile" means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

(d) "uninsured automobile" means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

Idem

(3) Where a dependent relative referred to in subclause (2) (b) (iii),

(a) is the owner of an automobile insured under a contract;  
or

(b) sustains bodily injuries or dies as the result of accident while the occupant of his own uninsured automobile,

such relative shall be deemed not to be a dependent relative for the purposes of this section.

Regulations

(4) The Lieutenant Governor in Council may make regulations,

(a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (1);

(b) deeming any term, condition, provision, exclusion or limit as prescribed, amended or altered by a regulation made under clause (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation; and

(c) requiring that terms, conditions, provisions, exclusions and limits, as prescribed, amended or altered by a regulation made under clause (a), be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

Subrogation

(5) Where an amount is paid under subsection (1), the insurer is subrogated to the rights of the person to whom such amount is

paid and the insurer may maintain an action in its name or in the name of such person against any other person or persons responsible for the use or operation of the uninsured or unidentified automobile.

(6) Any payments made or available to a person under Schedule C constitute, to the extent of such payments, a release by the person or his personal representative or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act*, of any claim that he may have under subsection (1), but in no event shall such release enure to the benefit of the person or persons against whom the insurer has a right of subrogation under subsection (5). Release  
R.S.O. 1980,  
c. 152

(7) This section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after the 1st day of March, 1980, and all contracts evidenced by motor vehicle liability policies that were subsisting on the 1st day of March, 1980, shall be deemed to provide for the payments referred to in subsection (1) in respect of an accident arising out of the use or operation of an automobile occurring on or after that date. 1979, c. 87, s. 16 (3). Application

**232.**—(1) Every contract evidenced by a motor vehicle liability policy shall provide the medical and rehabilitation benefits set forth in subsection (1) of Schedule C subject to the limits, terms and conditions set forth in Schedule C. 1971, c. 84, s. 14 (1). Medical and  
rehabilitation  
benefits

(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act* may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person. R.S.O. 1970, c. 224, s. 231 (2). Release by  
claimant

(3) The insurance mentioned in subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a First loss  
and excess  
insurance

deceased person is excess insurance only. R.S.O. 1970, c. 224, s. 231 (3); 1971, c. 84, s. 14 (2).

Excess  
insurance

(4) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses. R.S.O. 1970, c. 224, s. 231 (4); 1971, c. 84, s. 14 (3).

Idem

(5) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses. R.S.O. 1970, c. 224, s. 231 (5); 1971, c. 84, s. 14 (4).

Accident  
benefits

**233.**—(1) Every contract evidenced by a motor vehicle liability policy shall provide the death and total disability benefits set forth in subsection (2) of Schedule C in the terms, conditions, provisions and exclusions and subject to the limits as set forth in Schedule C. 1971, c. 84, s. 15 (1).

Release by  
claimant

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act* may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person. R.S.O. 1970, c. 224, s. 232 (2).

R.S.O. 1980,  
c. 152

Demand for  
particulars  
of insurance

**234.**—(1) Where a person is injured or killed in an accident in Ontario involving an automobile, that person or his personal representative may serve,

- (a) a demand by registered mail on the owner of the automobile; or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type mentioned in sections 232 and 233, or either of them, and, where the demand is made

under clause (a), requiring the owner, if he has such insurance, to state the name of the insurer.

(2) An owner or insurer who does not, within ten days <sup>Offence</sup> after receiving a demand made under subsection (1), comply with the demand is guilty of an offence. R.S.O. 1970, c. 224, s. 233.

**235.** Any person insured by but not named in a contract <sup>Rights of unnamed insured</sup> to which section 231, 232 or 233 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.O. 1970, c. 224, s. 234.

**236.**—(1) Where a person entitled to benefits provided <sup>First liability</sup> by insurance under section 232 and section 233 or either of them,

(a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for payment of the benefits provided by the insurance; or

(b) is a pedestrian and is struck by a motor vehicle, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for the payment of the benefits provided by the insurance.

(2) Nothing in this section affects the operation of sub- <sup>Idem</sup> sections 232 (2) to (5) and subsection 233 (2). 1971, c. 84, s. 16.

**237.**—(1) Where an insurer admits liability for insurance <sup>Payment into S.C.O.</sup> money payable under section 231, 232 or 233 and it appears that,

(a) there are adverse claimants;

(b) the whereabouts of an insured person entitled is unknown; or

(c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after thirty days after the date upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into the Supreme Court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

Discharge  
of insurer

(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into the Supreme Court, and the insurance money shall be dealt with as the court orders. R.S.O. 1970, c. 224, s. 235.

Limitation  
of action

**238.** Every action or proceeding against any insurer under a contract in respect of insurance provided under section 231, 232 or 233 shall be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than one year after the happening of the accident. R.S.O. 1970, c. 224, s. 236.

Claimant's  
obligation  
to inform

**239.**—(1) Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting onto or alighting from or as a result of being struck by an automobile, he shall furnish the person against whom the claim is made full particulars of all insurance available to the claimant under contracts falling within the scope of section 232 or 233.

Release by  
claimant of  
benefits  
under  
Schedule C

(2) Where a claimant is entitled to the benefit of insurance as provided in Schedule C this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or his insurer. 1971, c. 84, s. 17.

Terms of  
certain  
insurances

**240.** Subject to subsection 203 (1), an insurer may in a policy,

- (a) provide insurance that is less extensive in scope than the insurance mentioned in section 231; and
- (b) provide the terms of the contract that relate to the insurance mentioned in section 231. R.S.O. 1970, c. 224, s. 238; 1971, c. 84, s. 18.

## OTHER INSURANCE

Other  
insurance

**241.**—(1) Subject to section 223, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in paragraph 46 of section 1 is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) Subject to sections 223, 232 and 233 and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of his interest in the subject-matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

(3) "Rateable proportion" as used in subsection (2) means, Rateable proportion defined

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall share equally in any liability, expense, loss or damage;
- (b) if there are two insurers liable with different policy limits, the insurers shall share equally up to the limit of the smaller policy limit;
- (c) if there are more than two insurers liable, clauses (a) and (b) apply with necessary modifications. R.S.O. 1970, c. 224, s. 239.

#### SUBROGATION

**242.**—(1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights. Subrogation

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them. Pro-rating recovery

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 229 applies, the insurer shall have control of the action. Action when s. 229 applies

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to, Application to S.C.O.

- (a) the solicitors to be instructed to bring the action in the name of the insured;

- (b) the conduct and carriage of the action or any matters pertaining thereto;
- (c) any offer of settlement or the apportionment thereof, whether action has been commenced or not;
- (d) the acceptance of any money paid into court or the apportionment thereof;
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal,

either party may apply to the Supreme Court for the determination of the matters in question, and the court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

Idem

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

Concurrence  
in settlement  
or release

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein. R.S.O. 1970, c. 224, s. 240.

## PART VII

### ACCIDENT AND SICKNESS INSURANCE

Interpre-  
tation

**243.** In this Part,

- (a) "application" means a written application for insurance or for the reinstatement of insurance;
- (b) "beneficiary" means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;
- (c) "blanket insurance" means that class of group insurance that covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;

- (d) "contract" means a contract of insurance;
- (e) "court" means the Supreme Court, or a judge thereof;
- (f) "creditor's group insurance" means insurance effected by a creditor whereby the lives or well-being or the lives and well-being, of a number of his debtors are insured severally under a single contract;
- (g) "declaration" means an instrument signed by the insured,
  - (i) with respect to which an endorsement is made on the policy, or
  - (ii) that identifies the contract, or
  - (iii) that describes the insurance or insurance fund or a part thereof,

in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money that is payable in the event of death by accident;

- (h) "family insurance" means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;
- (i) "group insurance" means insurance other than creditor's group insurance and family insurance, whereby the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;
- (j) "group person insured" means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;
- (k) "instrument" includes a will;
- (l) "insurance" means accident insurance, sickness insurance, or accident insurance and sickness insurance;

(m) "insured",

(i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and

(ii) in all other cases means the person who makes a contract with an insurer;

(n) "person insured" means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

(o) "will" includes a codicil. R.S.O. 1970, c. 224, s. 241.

Application  
of Part

**244.**—(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to contracts made in Ontario on or after the 1st day of October, 1970.

Idem

(2) In the case of contracts made before and in effect on that day,

(a) this section and sections 243, 245, 246, 255, 258, 259 260 and 264, and sections 266 to 282 of this Part apply; and

R.S.O. 1960,  
c. 190

(b) sections 230, 231, 232, 233, 235, 242 and 245 of *The Insurance Act*, as it existed immediately before the 1st day of October, 1970, continue to apply.

Exceptions

(3) This Part does not apply to,

(a) accidental death insurance; or

(b) creditor's group insurance; or

(c) disability insurance; or

(d) insurance provided under section 231, 232 or 233. R.S.O. 1970, c. 224, s. 242.

Group  
insurance

**245.** In the case of a contract of group insurance made with an insurer authorized to transact insurance in Ontario at the time the contract was made, this Part applies in determining,

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in Ontario at the time he became insured; and
- (b) the rights and obligations of the group person insured if he was resident in Ontario at the time he became insured. R.S.O. 1970, c. 224, s. 243.

**246.** An insurer entering into a contract shall issue a policy. R.S.O. 1970, c. 224, s. 244. Issue of policy

**247.**—(1) This section does not apply to, Exceptions

- (a) a contract of group insurance; or
- (b) a contract made by a fraternal society.

(2) An insurer shall set forth the following particulars in the policy: Contents of policy

1. The name or a sufficient description of the insured and of the person insured.
2. The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable.
3. The amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid.
4. The conditions upon which the contract may be reinstated if it lapses.
5. The term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S.O. 1970, c. 224, s. 245.

**248.** Where a contract of accident insurance or sickness insurance issued after the 2nd day of November, 1973 includes a provision that a benefit is payable to an insured on account of his disability and the provision is conditional on the confinement of the insured, the condition does not bind the insured. 1973, c. 124, s. 15. Confinement clauses void

**249.** In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy: Contents of group policy

1. The name or a sufficient description of the insured.

2. The method of determining the group persons insured and persons insured.
3. The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable.
4. The period of grace, if any, within which the premium may be paid.
5. The term of the insurance or the method of determining the day upon which the insurance commences and terminates. R.S.O. 1970, c. 224, s. 246.

Continuation  
of accident  
and sickness  
insurance  
where  
contract  
terminated

**250.**—(1) Where a contract of group accident and sickness insurance, or a benefit provision therein, is terminated, the insurer continues to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to,

- (a) loss of income because of disability; or
- (b) death; or
- (c) dismemberment,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision as though the contract or benefit provision had remained in full force and effect; but the insurer is not liable to pay a benefit for loss of income because of disability in respect of the recurrence of disability arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the recurrence occurs after the termination of the contract or benefit provision and after a period of ninety days, or such longer period as is provided in the contract, during which the group person insured was not disabled.

Preservation  
of rights  
where  
contract  
replaced

(2) Where a contract of group accident and sickness insurance (herein referred to as the “replacing contract”) is entered into within thirty-one days of the termination of another contract of group accident and sickness insurance (herein referred to as the “other contract”) and insures the same group or a part of the group insured under the other contract,

- (a) the replacing contract shall provide or shall be deemed to provide that any person who was insured

under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if,

- (i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and
  - (ii) the person is a member of a class eligible for insurance under the replacing contract;
- (b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and
- (c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract. 1973, c. 124, s. 16.

**251.**—(1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars: Contents  
of group  
certificate

1. The name of the insurer and a sufficient identification of the contract.
2. The amount or the method of determining the amount of insurance on the group person insured and on any person insured.
3. The circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less. Exception  
R.S.O. 1970, c. 224, s. 247.

**252.**—(1) Subject to section 253 and except as otherwise provided in this section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected Exceptions  
or reduction

by the exception or reduction, or under a heading such as "Exceptions" or "Reductions".

Idem

(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

Idem

(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

Idem

(4) The exception or reduction mentioned in section 265 need not be set forth in the policy.

Idem

(5) This section does not apply to a contract made by a fraternal society. R.S.O. 1970, c. 224, s. 248.

Statutory  
conditions

**253.** Subject to section 254, the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading "Statutory Conditions".

### STATUTORY CONDITIONS

**The  
Contract**

1.—(1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

**Waiver**

(2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

**Copy of  
Application**

(3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

**Material Facts**

2. No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

**Changes in  
Occupation**

3.—(1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates

in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either,

- (a) reduce the premium rate; or
- (b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

**Relation of  
Earnings to  
Insurance**

4. Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

**Termination  
by Insured**

5. The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Province, or by delivery thereof to an authorized agent of the insurer in the Province, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

**Termination  
by Insurer**

6.—(1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the *pro rata* premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days notice of termination shall be given; where it is mailed to the insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

**Notice and  
Proof of Claim**

7.—(1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, shall,

- (a) give written notice of claim to the insurer,
- (i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the Province, or

- (ii) by delivery thereof to an authorized agent of the insurer in the Province,

not later than thirty days from the date a claim arises under the contract on account of an accident, sickness or disability;

- (b) within ninety days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age, and the age of the beneficiary if relevant; and
- (c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

**Failure to  
Give Notice  
or Proof**

(2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

**Insurer to  
Furnish  
Forms for  
Proof of  
Claim**

8. The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

**Rights of  
Examination**

9. As a condition precedent to recovery of insurance moneys under this contract,

- (a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and
- (b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

**When Moneys  
Payable Other  
Than for Loss  
of Time**

10. All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

**When Loss  
of Time  
Benefits  
Payable**

11. The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured

do so furnishes before payment proof of continuing disability.

**Limitation  
of Actions**

**12.** An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim.

R.S.O. 1970, c. 224, s. 249.

**254.**—(1) Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

Omission or  
variation of  
conditions

(2) Statutory conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

Idem

(3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

Idem

(4) Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but, if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 253.

Idem

(5) Clauses (a) and (b) of subcondition 7 (1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

Idem

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

Idem

(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

Idem

(8) In the case of a contract made by a fraternal society,

Contract by  
fraternal  
society

(a) the following provision shall be printed on every policy in substitution for subcondition 1 (1):

**The  
Contract**

**1.**—(1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute

the entire contract, and no agent has authority to change the contract or waive any of its provisions.

and

(b) statutory condition 5 shall not be printed on the policy. R.S.O. 1970, c. 224, s. 250.

Notice of  
statutory  
conditions

**255.** In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:

“Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance.” R.S.O. 1970, c. 224, s. 251.

Termination  
for non-  
payment of  
initial or  
renewal  
premium

**256.**—(1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or in the case of a renewal certificate the renewal premium therefor has not been fully paid,

- (a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and
- (b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the ten days shall begin on the day following the date of mailing such notice.

Exception

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society. R.S.O. 1970, c. 224, s. 252.

Right  
where  
premium  
unpaid

**257.**—(1) An insurer may,

- (a) deduct unpaid premiums from an amount that it is liable to pay under a contract; or
- (b) sue the insured for unpaid premiums.

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid. Where cheque or note for premium not paid

(3) Clause (1) (a) does not apply to a contract of group insurance. Exception

(4) This section does not apply to a contract made by a fraternal society. Idem R.S.O. 1970, c. 224, s. 253.

**258.** Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and well-being and in the life and well-being of, Insurable interest

- (a) his child or grandchild;
- (b) his spouse;
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education;
- (d) his officer or employee; and
- (e) any person in whom he has a pecuniary interest. R.S.O. 1970, c. 224, s. 254.

**259.**—(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void. Lack of insurable interest

(2) A contract is not void for lack of insurable interest, Exceptions

- (a) if it is a contract of group insurance; or
- (b) if the person insured has consented in writing to the insurance.

(3) Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of his parents or by a person standing *in loco parentis* to him. Consent of minors R.S.O. 1970, c. 224, s. 255.

#### POLICIES ON LIVES OF MINORS

**260.** Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years, Capacity of minors

(a) to make an enforceable contract; and

(b) in respect of a contract. R.S.O. 1970, c. 224, s. 256 (1); 1972, c. 66, s. 10 (1).

#### MISREPRESENTATION AND NON-DISCLOSURE

Duty to  
disclose

**261.**—(1) An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

Failure to  
disclose

(2) Subject to sections 262 and 265, a failure to disclose or a misrepresentation of such a fact renders a contract voidable by the insurer.

Group  
insurance  
failure to  
disclose

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 262, voidable by the insurer. R.S.O. 1970, c. 224, s. 257.

Incontest-  
ability

**262.**—(1) Subject to section 265 and except as provided in subsection (2),

(a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 261 to be disclosed does not, except in the case of fraud, render the contract voidable;

(b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 261 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim. R.S.O. 1970, c. 224, s. 258.

**263.** Sections 261 and 262 apply with necessary modifications to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 262 commences to run in respect of a reinstatement from the date of reinstatement. R.S.O. 1970, c. 224, s. 259.

**264.** Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract. R.S.O. 1970, c. 224, s. 260.

**265.—**(1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either,

- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

Misstate-  
ment of age  
in group  
insurance

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured, or person insured, the provisions, if any, of the contract with respect to age or misstatement of age shall apply.

True age  
governs

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs. R.S.O. 1970, c. 224, s. 261.

#### BENEFICIARIES

Designation  
of  
beneficiary

**266.**—(1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

Designation  
in invalid  
will

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

Priorities

(3) A designation in a will is of no effect against a designation made later than the making of the will.

Revocation

(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

Idem

(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked. R.S.O. 1970, c. 224, s. 262.

Meaning of  
"heirs", etc.

**267.**—(1) A designation in favour of the "heirs", "next-of-kin" or "estate", or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.

Death of  
beneficiary

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable,

(a) to the surviving beneficiary; or

- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.

(3) A beneficiary designated under section 266 may upon the death by accident of the person insured or group person insured enforce for his own benefit, and a trustee appointed pursuant to section 268 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative. R.S.O. 1970, c. 224, s. 263.

Right  
to sue

**268.** An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration. R.S.O. 1970, c. 224, s. 264.

Trustee for  
beneficiary

**269.**—(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of any court of competent jurisdiction affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Documents  
affecting  
title

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Saving

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada he has priority of interest as against,

Interest of  
assignee

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary.

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

Assignee  
deemed to  
be insured

Prohibition  
against  
assignment

(5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable is valid. R.S.O. 1970, c. 224, s. 265.

Insurance  
money free  
from  
creditors

**270.**—(1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Contract  
exempt  
from seizure

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure. R.S.O. 1970, c. 224, s. 266.

Group person  
insured  
enforcing  
rights

**271.** A group person insured may, in his own name, enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured. R.S.O. 1970, c. 224, s. 267.

Simultaneous  
deaths

**272.** Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 267 (2) as if the beneficiary had predeceased the person insured or group person insured. R.S.O. 1970, c. 224, s. 268.

Payment  
into court

**273.**—(1) Where the insurer admits liability for the insurance money or any part thereof and it appears to the insurer that,

(a) there are adverse claimants; or

(b) the whereabouts of the person entitled is unknown; or

(c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply *ex parte* to the court for an order for payment of money into court, and the court may upon

such notice, if any, as it deems necessary, make an order accordingly.

(2) The court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just. Costs of proceedings

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment. Discharge of insurer R.S.O. 1970, c. 224, s. 269.

**274.**—(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor. Where beneficiary a minor

(2) The insurer may retain, out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer. Costs

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Official Guardian and deliver to him a copy of the affidavit. Procedure R.S.O. 1970, c. 224, s. 270.

**275.** Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. Beneficiary under disability R.S.O. 1970, c. 224, s. 271.

**276.** Notwithstanding that insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to, Payments not exceeding \$2,000

- (a) a relative by blood or connection by marriage of a person insured or the group person insured; or
- (b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,

and any such payment discharges the insurer to the extent of the amount paid. R.S.O. 1970, c. 224, s. 272.

Place of  
payment

**277.**—(1) Subject to subsection (2), insurance money is payable in Ontario.

Exception  
for group  
insurance

(2) In the case of a contract of group insurance, money is payable in the province or territory of Canada in which the group person insured was resident at the time he became insured.

Dollars

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

Payment  
outside  
Ontario

(4) Where a person entitled to receive insurance money is not domiciled in Ontario, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

Payment to  
personal  
representa-  
tive

(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in Ontario, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid. R.S.O. 1970, c. 224, s. 273.

Action in  
Ontario

**278.** Regardless of the place where a contract was made, a claimant who is a resident of Ontario may bring an action in Ontario if the insurer was authorized to transact insurance in Ontario at the time the contract was made or at the time the action is brought. R.S.O. 1970, c. 224, s. 274.

Insurer  
giving  
information

**279.** An insurer does not incur any liability for any default, error or omission in giving or withholding informa-

tion as to any notice or instrument that it has received and that affects the insurance money. R.S.O. 1970, c. 224, s. 275.

**280.** The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy. R.S.O. 1970, c. 224, s. 276. Undue prominence

**281.** Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and any court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just. R.S.O. 1970, c. 224, s. 277. Relief from forfeiture

**282.** No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract. R.S.O. 1970, c. 224, s. 278. Presumption against agency

## PART VIII

### LIVE STOCK INSURANCE

**283.** This Part applies to live stock insurance and to any insurer carrying on the business of live stock insurance in Ontario. R.S.O. 1970, c. 224, s. 279. Application of Part

**284.** Every insurer licensed for the transaction of live stock insurance may, within the limits and subject to the conditions prescribed by the licence, insure against loss of live stock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of any enemy or by insurrection. R.S.O. 1970, c. 224, s. 280. Property that may be insured

**285.** The following provisions of Part IV apply to live stock insurance contracts: Application of provisions as to fire insurance

1. The provisions as to the form and contents of the policy.
2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.
3. The provisions relating to premium notes and assessments, other than sections 132, 133 and 143, where the insurance is on the premium note plan. R.S.O. 1970, c. 224, s. 281.

Term of  
contract

**286.**—(1) Contracts of insurance shall not in any case exceed the term of two years.

Renewing  
policies

(2) A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy, on the assured paying the required premium or giving his premium note, and all payments or renewal by cash or premium notes must be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy is void.

Premium  
note

(3) No premium note taken under a contract of insurance shall exceed 40 per cent or be less than 10 per cent per annum of the sum insured, and no renewal receipt shall extend the contract beyond two years from the date of the policy. R.S.O. 1970, c. 224, s. 282.

## PART IX

### WEATHER INSURANCE

Application  
of Part

**287.** This Part applies to weather insurance and to any insurer carrying on the business of weather insurance in Ontario, but does not apply to weather insurance provided by an endorsement to a contract of fire insurance. R.S.O. 1970, c. 224, s. 283.

What may  
be insured

**288.** Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by the licence, insure against such atmospheric disturbances, discharges or conditions as the contract of insurance specifies. R.S.O. 1970, c. 224, s. 284.

Application  
of certain  
provisions  
as to fire  
insurance

**289.**—(1) The following provisions of Part IV apply to weather insurance contracts:

1. The provisions as to the form and contents of the policy.

2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.
3. The provisions relating to premium notes and assessments, other than sections 132, 133 and 143, where the insurance is on the premium note plan.
4. The provisions relating to a refund from surplus.

(2) The following additional conditions form part of every weather insurance contract: Additional conditions

1. The insurance may be terminated by the insurer by giving seven days notice to that effect.
2. The insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where the buildings or structures have been weakened by subsequent alterations unless permission to make such alterations has been previously granted in writing signed by a duly authorized agent of the insurer. R.S.O. 1970, c. 224, s. 285.

**290.** A contract of weather insurance shall not in any case exceed the term of three years. R.S.O. 1970, c. 224, s. 286. Term of contract

**291.** On every premium note taken by the insurer there shall be payable at the commencement of the three-year term of insurance a basic cash payment amounting to at least three-fifths of 1 per cent of the sum insured or *pro rata* where the cash payment is paid in advance for a shorter term, and the premium note shall, as to the balance thereof, be subject to assessment by the directors, and when the amount of insurance in force exceeds \$10,000,000 and the total assets of the company, including premium note residue, do not fall below 2 per cent of the total amount at risk, the basic cash payment may be reduced to three-eighths of 1 per cent of the sum insured for three years or *pro rata* for a shorter term, and when the amount of insurance in force exceeds \$25,000,000 and the total assets of the company, including premium note residue, do not fall below 1½ per cent of the total amount at risk, the Superintendent may authorize a further reduction of the basic cash payment for three years, which shall not be less than three-tenths of 1 per cent of the sum insured or *pro rata* for a shorter term. R.S.O. 1970, c. 224, s. 287. Premium note

## PART X

## FRATERNAL SOCIETIES

Interpre-  
tation

**292.** In this Part,

- (a) "rates of contribution" means the regular net premiums, dues, rates or contributions receivable from the members for the purpose of the payment at maturity of the society's certificates or contracts of insurance;
- (b) "society" means a fraternal society. R.S.O. 1970, c. 224, s. 288.

Application  
of Part

**293.**—(1) Subject to subsection (2), this Part applies to all fraternal societies carrying on the business of insurance in Ontario.

Application of  
ss. 309-313  
to certain  
societies

(2) Sections 309 to 313 do not apply to a fraternal society whose membership is limited by its constitution or laws to municipal or government employees. R.S.O. 1970, c. 224, s. 289.

What  
fraternal  
societies  
required to  
be licensed

**294.** Fraternal societies required to be licensed under this Act include,

- (a) a company, society, association or organization incorporated before the 10th day of March, 1890, under chapter 172 of The Revised Statutes of Ontario, 1887, or a predecessor thereof;
- (b) a society incorporated under chapter 183 of The Revised Statutes of Ontario, 1914, or a predecessor thereof, that undertakes insurance against death;
- (c) an association of the civil servants or employees of Canada incorporated by or under the authority of an Act of the Parliament of Canada;
- (d) a fraternal society incorporated after the 1st day of January, 1924, under the *Corporations Act* or a predecessor thereof. R.S.O. 1970, c. 224, s. 290.

R.S.O. 1980,  
c. 95

Cases in  
which such  
societies  
not to be  
licensed

**295.** No fraternal society shall be licensed,

- (a) if it undertakes insurance contracts with persons other than its own members; or

- (b) except as provided in section 318, if it insures or indemnifies against contingencies other than sickness, accident, disability, death or funeral expenses; or
- (c) if it has upon its books fewer than seventy-five members in good standing; or
- (d) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured; or
- (e) in the case of a fraternal society that has not been authorized to carry on business in Ontario before the 1st day of January, 1925, unless the society files with the Superintendent a declaration of its actuary in the form and to the effect required by subsection 308 (2). R.S.O. 1970, c. 224, s. 291.

**296.** The following shall be deemed not to be fraternal societies within the meaning of this Part and shall not be required or entitled to be licensed as such:

Societies not  
deemed to  
be fraternal  
societies

1. Societies known as mutual benefit societies as defined in section 1 and subject to Part XI, including,
  - i. a society that was incorporated under sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which that Act was substituted and that does not undertake contracts of life insurance, and
  - ii. a trade union in Ontario that under the authority of its incorporating Act or charter has an insurance or benefit fund for the benefit of its own members exclusively, and
  - iii. a mutual benefit society incorporated after the 1st day of January, 1925, under the *Corporations Act* or a predecessor thereof.
2. Pension fund and employees' benefit societies incorporated under the *Corporations Act* or a predecessor thereof.

R.S.O. 1980,  
c. 95

3. A corporation not otherwise provided for in this Act that has by or under the authority of an Act of the Parliament of Canada created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition.
4. A corporation not otherwise provided for in this Act that has by or under the authority of an Act of the Parliament of Canada an insurance and provident society or association, or an insurance or guarantee fund in connection with the corporation.
5. A corporation that undertakes or offers to undertake contracts of insurance prohibited by section 295.
6. A corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, whose insurance fund is held other than as a trust fund for the members insured.
7. A society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society, or in which the officers or other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than four years.
8. Any corporation that undertakes contracts of insurance but is not formed exclusively for that purpose and that does not for the purposes of such contracts keep distinct and separate funds, securities, books and vouchers. R.S.O. 1970, c. 224, s. 292.

Guarantee  
and  
endowment  
insurance

**297.** Clause 295 (b) does not apply to contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of a corporation. R.S.O. 1970, c. 224, s. 293.

Central  
body for  
Ontario or  
representa-  
tive may be  
dealt with

**298.**—(1) Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in Ontario or a duly authorized provincial representative of the society, such governing body, if incorporated, or such provincial representative of the society may, if the Superintendent thinks proper, be dealt with as the society.

(2) In the case of a fraternal society incorporated elsewhere than in Ontario, the central governing or controlling body in Ontario, if incorporated by virtue of the law of Ontario, may, if the Superintendent thinks proper, be dealt with as the society. R.S.O. 1970, c. 224, s. 294.

When  
central body  
for Ontario  
incorporated

**299.**—(1) Every fraternal society shall, with its application for licence, file in the office of the Superintendent duly certified copies in duplicate of those articles or provisions of the subsisting constitution, by-laws or rules that contain material terms not set out in the instrument of contract adopted by the society, and shall, from time to time, file in the office of the Superintendent duly certified copies in duplicate of every amendment, revision or consolidation of such articles or provisions of the constitution, by-laws and rules within thirty days after the passing or adoption of the amendment, revision or consolidation.

By-laws and  
rules to be  
filed with  
Superin-  
tendent

(2) The Superintendent may, within thirty days after the date of such filing, take exception to any amendment or revision or any part thereof if, in his opinion, the amendment or revision or any part thereof is contrary to this Act, or is actuarially unsound, or is oppressive to or discriminatory in application against any class of the membership of the society, or is unjust or unreasonable.

Superin-  
tendent may  
take  
exception  
within  
30 days

(3) If the Superintendent takes exception to any such amendment or revision or any part thereof in accordance with this section, he shall forthwith notify the society thereof in writing and the reasons therefor.

Notice

(4) The society or any person who considers himself aggrieved by the decision of the Superintendent may appeal therefrom in the manner provided by section 11. R.S.O. 1970, c. 224, s. 295 (1-4).

Appeal

(5) The original constitution, by-laws and rules and any amendment, revision or consolidation thereof, to which the Superintendent does not take exception, or that, after the Superintendent has taken exception to an amendment or revision or any part thereof, have been further amended in accordance with the Superintendent's direction, or that, after the Superintendent has taken exception to an amendment or revision or any part thereof, has been approved and confirmed on appeal from the Superintendent as herein provided, shall be certified by the Superintendent to be duly passed by the society as filed. R.S.O. 1970, c. 224, s. 295 (5); 1973, c. 124, s. 17.

Certified  
by-laws and  
rules

By-laws and rules as filed to be binding on society

(6) The constitution, by-laws or rules and any amendment, revision or consolidation thereof so certified shall, notwithstanding the declaration or other instrument filed under any general or special Act, be deemed to be the rules in force on and after the date of the certificate until a subsequent amendment, revision or consolidation is in like manner certified and filed and so from time to time, and are binding and obligatory upon all members of the society and upon all their beneficiaries and legal representatives and upon everyone entitled to any benefit under any certificate of the society, but the failure of the Superintendent to take exception to any rule of the society or amendment or revision thereof and his certifying and filing of the same does not make valid any provision of such rule that is inconsistent with this Act.

Where section does not apply

(7) This section does not apply to the constitution, by-laws and rules of a society or any amendment, revision or consolidation thereof passed and adopted by the society before the 1st day of January, 1925. R.S.O. 1970, c. 224, s. 295 (6, 7).

Where rules must be amended

**300.** Where because of a provision in any of its rules a society otherwise entitled to be licensed ought not, in the opinion of the Superintendent, to be licensed, it is not entitled to a licence until it has repealed or amended such rules in accordance with the direction of the Superintendent. R.S.O. 1970, c. 224, s. 296.

Rules deliverable on demand

**301.—**(1) A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be delivered by the society to any person requiring it on payment of 25 cents.

Fraudulent delivery

(2) An officer or agent of a society who, with intent to mislead or defraud, gives a person a copy of rules other than the rules then in force on the pretence that they are the rules then in force is guilty of an offence. R.S.O. 1970, c. 224, s. 297.

Substitution of instalments for gross payment

**302.—**(1) Where by the constitution and rules of a society provision is made for the payment of an ascertained or ascertainable sum to a member of the society in the event of his becoming totally disabled, or of his reaching a stated age, or upon the concurrence of both events, whether such provision is combined with other life insurance or not, the society may, with the approval of the Superintendent, so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual instalments without interest, the payment of such instalments to be

completed within a period not exceeding ten years from the happening of the event, but no person who has become entitled, or may become so entitled as aforesaid, to any such annual instalment shall receive payment of it unless at the maturity of each instalment such person has continued to be a member of the society and has paid all dues and assessments adopted by the society.

(2) All such amendments that have heretofore been or that are hereafter made by a society under its constitution and rules are valid and binding upon all its members and upon all their beneficiaries and personal representatives and upon everyone entitled, notwithstanding anything to the contrary in the instrument of incorporation of the society or the previous provisions of its constitution and rules.

Amendments  
of rules to  
that intent  
validated

(3) If a member of the society dies after becoming totally disabled or reaching the stated age but before the payment of all instalments, the instalments unpaid form part of the insurance money or benefits payable upon the death of such member.

When  
insured dies  
before  
receiving all  
instalments

(4) No unmatured policy or contract of insurance creates any claim or liability against the society while a going society or against the estate of the society in a winding up or liquidation, but in a winding up or liquidation the insured or beneficiary for value under such unmatured policy or contract is entitled to share in the surplus assets of the society. R.S.O. 1970, c. 224, s. 298.

Unmatured  
policies as  
liabilities

**303.**—(1) The liabilities of a member under his contract at any date is limited to the assessments, fees and dues that become payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society.

Limitation  
of member's  
liability in  
fraternal  
society

(2) A member may at any time withdraw from the society by delivering or sending by registered mail to the society notice in writing of his intention to withdraw and paying or tendering the assessments, fees and dues mentioned in subsection (1).

Withdrawal  
of member

(3) After such withdrawal, the member becomes thereby released from all further liability under his contract. R.S.O. 1970, c. 224, s. 299 (1-3).

Release from  
liability

(4) This section is subject to any rules to the contrary certified by the Superintendent and filed with the Minister as hereinbefore provided. R.S.O. 1970, c. 224, s. 299 (4); 1972, c. 1, s. 42 (3).

Subject  
to rules

Notice  
before  
forfeiture  
of benefit

**304.**—(1) No forfeiture or suspension shall be incurred by reason of any default in paying any contribution or assessment, except such as are payable in fixed sums and at fixed dates, until after notice to the member stating the amount due by him, and that in case of default of payment within a reasonable time, not less than thirty days, to the proper officer, who shall be named in such notice, his interest or benefit will be forfeited or suspended, and default has been made by him in paying his contributions or assessment in accordance with such notice.

Interpre-  
tation

(2) In subsection (1), “fixed dates” includes any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

Saving  
rights to re-  
instatement

(3) Where under the constitution or rules or by-laws of the society a defaulting member is entitled to be reinstated on payment of arrears after a stated number of days default, this section does not prejudice the rights of such member. R.S.O. 1970, c. 224, s. 300.

Conditions  
of forfeiture  
restricted

**305.**—(1) Where it is stipulated that the benefit of the contract will be suspended or reduced or forfeited for any other reason than for non-payment of money, such condition is not valid unless it is held to be just and reasonable under the circumstances of the case.

Condition  
as to  
abstinence

(2) In any contract of which total abstinence from intoxicating liquors is made an express condition, such condition shall be deemed to be just and reasonable. R.S.O. 1970, c. 224, s. 301.

How notice  
may be  
given to  
members

**306.**—(1) Subject to subsection (2), a notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or is sent by registered mail to the member, or is left at his last known place of abode or of business or by publication in the official paper of the society.

Notice of  
reduction  
of benefit,  
etc.

(2) A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable thereunder shall be sent by registered mail to the member at his last known place of abode or of business. R.S.O. 1970, c. 224, s. 302.

Head offices  
of Ontario  
societies

**307.** A society incorporated under any Act of the Legislature is not entitled to a licence unless its head office is located and maintained in Ontario and the secretary and treasurer are *bona fide* residents in Ontario. R.S.O. 1970, c. 224, s. 303.

**308.**—(1) Subject to subsection (4), in addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent, not later than the 1st day of May in each year, a valuation of its certificates or contracts of insurance in force at the last preceding 31st day of December, which valuation shall have regard to the prospective liabilities of the society under its certificates or contracts of insurance and to the rates of contribution to be thereafter received from its members on such certificates according to the rates in force at the date of valuation and shall be made and certified by an actuary appointed by the society and shall include a valuation balance sheet in such form and detail as the Superintendent from time to time may prescribe.

Valuation  
report

(2) Where in the opinion of the actuary appointed by the society the valuation balance sheet shows that the society is in a position to provide for the payment of its contracts of insurance as they mature without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect.

Declaration  
of actuary

(3) A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than the 1st day of June in each year or in lieu thereof such certified summary of the valuation and statement of the actuary may be published in the society's official paper and a copy mailed to each insured member.

Distribution  
of summary  
and state-  
ment to  
members

(4) A fraternal society whose membership is limited by its constitution or laws to municipal or government employees shall not be required to file the valuation mentioned in subsection (1) or to publish the summary thereof mentioned in subsection (3) unless and until required by the Superintendent in writing so to do. R.S.O. 1970, c. 224, s. 304.

Exception  
as to certain  
fraternal  
societies

**309.**—(1) If it appears to the Superintendent from the statement and reports filed with him or from an examination or valuation made under this Act that the assets of a licensed fraternal society applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister as to the financial condition of the society.

Where assets  
of society  
insufficient

(2) If the Minister after consideration of the report concurs in the opinion of the Superintendent, the Minister shall request the society to make, within such time as he may

Minister  
may request  
society to  
increase its  
rates, etc.

prescribe, but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

Society to  
act upon  
request

(3) On receipt of such request, the society shall take the steps prescribed by its laws or constitution for putting into effect such changes as may be approved by the actuary appointed by the society for the purpose aforesaid.

Special  
meeting to  
consider  
request of  
Minister

(4) Where in the opinion of the governing executive authority of the society a special meeting of the society is desirable for the purpose of considering the request of the Minister, the authority may call a special meeting of the supreme legislative body of the society upon such notice as the authority considers reasonable and as the Superintendent may approve, and such meeting so called shall be deemed to have been regularly constituted notwithstanding anything in its constitution and laws. R.S.O. 1970, c. 224, s. 305.

Reduction  
of benefits,  
or increase  
of rates

**310.** A fraternal society incorporated under the laws of Ontario may by amendment of its constitution and laws reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes thereof, or make such other changes as are necessary to comply with the aforesaid request of the Minister and such amendments when adopted by a majority of the votes duly cast by the members of the supreme legislative body of the society at a regular or special meeting of the supreme legislative body of the society duly called are binding upon the members of the society and upon their beneficiaries or legal representatives and upon all persons deriving legal rights from any member or beneficiary, notwithstanding anything in its constitution and laws before such amendments or in its Act or instrument of incorporation, or in any contract, policy or certificate of insurance heretofore or hereafter issued by the society. R.S.O. 1970, c. 224, s. 306.

Default of  
society in  
complying  
with request  
of Minister

**311.**—(1) Where a society does not within the time allowed comply with the request of the Minister as prescribed by subsection 309 (2), the Superintendent shall report the default to the Minister, who shall thereupon appoint a readjustment committee of three persons of whom at least one must be an actuary who shall at as early a date as practicable investigate the assets, liabilities, rates of contribution and plans of insurance of the society and prepare a report containing such amendments to the society's

constitution and laws reducing the benefits payable under its contracts of insurance or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or such other amendments as the readjustment committee considers necessary in order to provide for the payment of all the contracts of insurance of the society as they mature in accordance with the amendments.

(2) The readjustment committee shall file such report in the office of the Superintendent and deliver to the society a certified copy thereof and, immediately upon such report being filed with the Superintendent, the amendments contained therein become part of the constitution and laws of the society and are valid and binding upon all its members and upon their beneficiaries or personal representatives and upon all persons deriving legal rights from any member or beneficiary notwithstanding anything in its constitution and laws before such amendments or in its Act or instrument of incorporation or in any policy or certificate of insurance issued by it.

Amendments  
in report of  
committee  
to be part  
of society's  
constitution

(3) The readjustment committee shall in the amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution provided for by such amendments will be in full force and effect.

Date to be  
fixed in  
report

(4) The society shall bear the expense of the investigation and report and shall furnish the readjustment committee with required information. R.S.O. 1970, c. 224, s. 307.

Expenses

**312.**—(1) Where a society that is unable to furnish the declaration of an actuary prescribed in subsection 308 (2) has heretofore adopted or hereafter adopts new rates of contribution that in the opinion of the actuary appointed by the society, filed with the Superintendent, make reasonable provision for the payment in full at maturity of the contracts of insurance issued to its members who have entered or enter the society upon such new rates of contribution, the society shall, after the payment of the matured contracts of such members, create and from time to time maintain out of the rates of contributions of such members and interest accretions thereto a reserve fund not less than the amount that, with the rates of contributions to be collected from such members, is, in the opinion of the actuary, required to pay in full such contracts of insurance as they mature, and such fund shall be a separate fund of the society and is not liable for payment of the debts and obligations of the society under its contracts of

Where  
society  
unable to  
furnish  
declaration  
of actuary

insurance with those members who have not contributed to the funds of the society under such new rates of contribution or under subsection (2).

New  
certificates  
may be  
issued

(2) The society may provide in its constitution and laws for the issue of new certificates to members admitted to the society before the establishment of such fund upon such terms and conditions as will, in the opinion of the actuary appointed by the society certified in writing to the Superintendent, enable the society to pay in full the contracts of insurance issued to such members as they mature, and subsection (1) applies to such new certificates.

Annual  
valuation  
of actuary,  
what to  
show

(3) The annual valuation of the actuary of the society maintaining a separate fund as hereinbefore prescribed shall show clearly and separately and in such detail as the Superintendent may require the financial position of the society in respect of the certificates of insurance included, and those not included, within the scope of the separate fund.

Merger  
of funds

(4) When a society that has been maintaining a separate fund for new members in accordance with this section files with the Superintendent a declaration of the actuary appointed by the society, the separate fund may, with the approval of the Superintendent, be merged with the other funds of the society of a kindred nature.

Main-  
tenance of  
common  
expense fund

(5) Nothing herein prevents a society that maintains a separate fund as hereinbefore described from maintaining a common expense fund. R.S.O. 1970, c. 224, s. 308.

Limitation  
of con-  
tribution

**313.** A society that files with the Superintendent the declaration prescribed by subsection 308 (2) or a society that maintains a separate fund for its contracts of insurance as prescribed by section 312 may provide in its constitution and laws for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder may be limited to a period of twenty or more years, if such rates of contribution have been approved by an actuary and if such certificates of insurance are subject to subsection 312 (1), but such limitation of payments does not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with the constitution and laws of the society either during or after the period of such limited payments. R.S.O. 1970, c. 224, s. 309.

Epidemic or  
unforeseen  
contingency

**314.** In the event of an epidemic or other unforeseen contingency impairing the funds of a society, the governing executive authority of the society may impose a special

assessment or special assessments upon the members of the society or upon such class or classes thereof and with such incidence as in the opinion of the governing executive authority is necessary and equitable, and such special assessment or assessments are binding on the members of the society notwithstanding anything to the contrary in its Act or instrument of incorporation or its constitution and laws, or in any certificate of insurance heretofore or hereafter issued by the society. R.S.O. 1970, c. 224, s. 310.

**315.** The governing executive authority of a society may make such additional levies from time to time upon all members of the society as are necessary, in the opinion of the governing executive authority, to properly carry on the work of the society and prevent any deficit in its general or expense fund, and such additional levies are binding on its members notwithstanding anything to the contrary in its Act or instrument of incorporation, or in its constitution or laws, or in any certificate of insurance heretofore or hereafter issued by it. R.S.O. 1970, c. 224, s. 311.

**316.** A society whose valuation balance sheet prescribed by subsection 308 (1) shows a surplus of assets of more than 5 per cent over and above all its liabilities may apply the surplus or a part thereof, by way of transfer from the mortuary to the expense fund, by waiver of premium, by bonus additions or otherwise, in any manner that may be approved by the actuary appointed by the society, if a certificate of the actuary is filed with the Superintendent at least thirty days before any application or transfer is made certifying that the proposed application or transfer is authorized by the constitution and laws of the society, that it is fair and reasonable and in the best interests of the society, and that it will not prejudice the ability of the society to pay its contracts of insurance as they mature. R.S.O. 1970, c. 224, s. 312.

**317.** Every licensed fraternal society shall, before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution. R.S.O. 1970, c. 224, s. 313.

**318.** A fraternal society licensed under this Act that has filed with the Superintendent for at least three successive years a declaration of an actuary as required by subsection 308 (2), if duly authorized by a by-law of the society passed on the recommendation of the actuary, may issue to its members,

- (a) endowment or term insurance contracts;
- (b) insurance contracts under which the sum or sums payable on the death of any one person, other than a double indemnity accident benefit, is in excess of \$10,000; and
- (c) annuities of all kinds. R.S.O. 1970, c. 224, s. 314.

Recom-  
mendation of  
actuary

**319.** Every by-law referred to in section 318 shall set forth the rates of benefit and indemnity and the amounts of insurance or annuity that may be issued, but such by-law is without effect unless the actuary of the society certifies to the reasonableness of the rates of benefit and indemnity and of the amounts of insurance or annuity having regard to,

- (a) all the conditions and circumstances of their issuance;
- (b) the sufficiency of the rates of contribution therefor; and
- (c) the reasonableness of the loan values, cash values and other equities that may be provided,

and recommends the passing of such by-laws. R.S.O. 1970, c. 224, s. 315.

Societies  
composed of  
municipal  
and  
government  
employees

**320.** Notwithstanding sections 318 and 319, any society whose membership is limited by its constitution or laws to municipal or government employees may undertake annuities on lives in the nature of old age pensions. R.S.O. 1970, c. 224, s. 316.

Surrender  
values and  
other  
equities

**321.** A fraternal society licensed under this Act that files with the Superintendent a declaration of an actuary as provided by subsection 308 (2) may, if its constitution so provides and subject thereto, grant such surrender values or other equities as are approved by its actuary and authorized by its constitution. R.S.O. 1970, c. 224, s. 317.

Report  
by Super-  
intendent  
where assets  
of certain  
societies  
insufficient

**322.—**(1) If it appears to the Superintendent from the statements and reports filed with him or from an examination or valuation made under this Act that the assets of a licensed fraternal society whose membership is limited by its constitution or laws to municipal or government employees applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister and to the head or

responsible officer of the municipality or government of which the members of the society are employees as to the financial condition of the society.

(2) The Superintendent shall not make any order or assume any responsibility for the readjustment of rates and benefits of the society necessary to enable it to provide for the payment of the contracts of insurance of the society at maturity, but a synopsis of his special report shall be reported in his annual report. R.S.O. 1970, c. 224, s. 318.

**323.** Where the constitution, by-laws or rules of a fraternal society provide for a fiscal year other than the calendar year, the Superintendent may, in his discretion, accept statements from it showing its affairs as at the end of the fiscal year instead of as at the end of the calendar year. R.S.O. 1970, c. 224, s. 319.

## PART XI

### MUTUAL BENEFIT SOCIETIES

**324.** Mutual benefit societies required to be licensed under this Act include,

(a) a society incorporated under sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or a predecessor thereof that does not undertake contracts of life insurance;

(b) a mutual benefit society incorporated after the 1st day of January, 1925, under the *Corporations Act* or a predecessor thereof. R.S.O. 1970, c. 224, s. 320.

**325.**—(1) Subject to subsection (2), no mutual benefit society shall be licensed or have its licence renewed,

(a) if it has upon its books less than seventy-five members in good standing;

(b) if it insures or indemnifies against contingencies other than sickness, disability or funeral expenses;

(c) if it contracts for sick benefits for an amount in excess of \$30 per week or for a funeral benefit in excess of \$800;

(d) if it undertakes insurance contracts with persons other than its own members;

(e) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured;

(f) if it has charge of or manages or distributes charity or gratuities or donations only. R.S.O. 1970, c. 224, s. 321 (1); 1973, c. 124, s. 18.

**Exception**

(2) The Minister may, in his discretion, renew the licence of any mutual benefit society notwithstanding that it has upon its books, at the time of application for the renewal, less than seventy-five members in good standing. R.S.O. 1970, c. 224, s. 321 (2).

**Application  
of certain  
sections**

**326.** Sections 298, 299 and 300 apply with necessary modifications to societies licensed under this Part. R.S.O. 1970, c. 224, s. 322.

**Exception as  
to annual  
statement**

**327.** Where the constitution, by-laws or rules of a mutual benefit society that grants benefits solely through subordinate lodges or branches provide for a fiscal year other than the calendar year, the Superintendent may, in his discretion, accept statements from it showing its affairs as at the end of its fiscal year instead of as at the end of the calendar year. R.S.O. 1970, c. 224, s. 323.

## PART XII

### PENSION FUND ASSOCIATIONS

**Application  
of Part**

**328.**—(1) This Part applies to all applications for licence of pension fund associations and to such pension fund associations when licensed under this Act.

**Application  
of certain  
sections**

(2) Subject to the express provisions of this Part, the provisions of this Act applicable to insurers licensed to undertake contracts of life insurance in Ontario, except sections 45 to 78, section 85 and Part V, apply to all pension fund associations. R.S.O. 1970, c. 224, s. 324.

**Valuation  
to be filed**

**329.** In addition to the annual statements required to be filed by every licensed insurer on or before the last day of February in each year, each pension fund association shall file with the Superintendent, in such form and at such times as he may require, a valuation of its certificates or contracts of insurance, which valuation shall have regard to

the prospective liabilities of the pension fund association under its certificates or contracts of insurance, and to the rates of contribution to be thereafter received from its members on such certificates according to the rates of contribution in force at the date of valuation, and shall be made and certified by an actuary appointed by the pension fund association and approved by the Superintendent, and shall include a valuation balance sheet in such form and detail and according to such standards of valuation, having regard to the table of mortality and the rate of interest to be employed, as the Superintendent from time to time may prescribe. R.S.O. 1970, c. 224, s. 325.

### PART XIII

#### RECIPROCAL OR INTER-INSURANCE EXCHANGES

**330.** In this Part, unless the context otherwise requires, Interpre-  
tation

- (a) "attorney" means a person authorized to act for subscribers as provided in section 333;
- (b) "subscribers" means the persons exchanging with each other reciprocal contracts of indemnity or inter-insurance as provided in section 331. R.S.O. 1970, c. 224, s. 326.

**331.** It is lawful for a person to exchange with other persons in Ontario and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed under this Act, except life insurance, accident insurance, sickness insurance, and guarantee insurance. R.S.O. 1970, c. 224, s. 327. Authority  
for exchange  
of reciprocal  
contracts of  
insurance

**332.** No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons reciprocal contracts of indemnity or inter-insurance under this Act. R.S.O. 1970, c. 224, s. 328. Subscriber  
not to be  
deemed an  
insurer

**333.—**(1) Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided. Execution  
of contract

(2) Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in Ontario. R.S.O. 1970, c. 224, s. 329. Who may  
maintain  
action in  
contract

Declaration  
by members  
of exchanges

**334.** The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth,

- (a) the name of the attorney and the name or designation under which such contracts are issued, which name or designation must not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception;
- (b) the classes of insurance to be effected or exchanged under such contracts;
- (c) a copy of the form of the contract, agreement or policy under or by which such reciprocal contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) a copy of the form of power of attorney under which such contracts are to be effected or exchanged;
- (e) the location of the office from which such contracts are to be issued;
- (f) a financial statement in the form prescribed by the Superintendent;
- (g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;
- (h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. R.S.O. 1970, c. 224, s. 330.

Form of  
licence

**335.**—(1) Upon an exchange complying with this Part, the Superintendent may issue a licence. R.S.O. 1970, c. 224, s. 331 (1); 1972, c. 66, s. 11.

Deposit

(2) Notwithstanding anything in this Act, the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its

licence, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent considers proper. R.S.O. 1970, c. 224, s. 331 (2).

**336.** A licence shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance, Evidence required before issue of licence for

(a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least seventy-five separate risks in Ontario or elsewhere aggregating not less than \$1,500,000 as represented by executed contracts of *bona fide* applications to become concurrently effective; fire insurance

(b) in respect of automobiles, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least 500 automobiles as represented by executed contracts or *bona fide* applications to become concurrently effective, and that arrangements satisfactory to him are in effect for the reinsurance of all liabilities in excess of such limits as he may prescribe. R.S.O. 1970, c. 224, s. 332. automobile insurance

**337.** Where the office from which such contracts are to be issued is not in Ontario, service upon the Superintendent of notice or process in any action or proceeding in Ontario in respect of contract of indemnity or inter-insurance effected by the exchange shall be deemed service upon the subscribers who are members of the exchange at the time of the service. R.S.O. 1970, c. 224, s. 333. Service of process

**338.** There shall be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that he has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least 500 subscribers, and that from such examination or other information in his possession it appears that no subscriber has assumed on any single fire insurance risk an amount greater than 10 per cent of the net worth of such subscriber. R.S.O. 1970, c. 224, s. 334. Statement of maximum indemnity

**339.**—(1) There shall at all times be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to 50 per cent of the annual deposits or Amount of reserve

advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on those for longer periods.

Guarantee  
fund

(2) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than \$50,000.

Guarantee  
fund of fire  
insurance  
domestic  
exchange

(3) In the case of a fire insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection (2) shall not be less than \$25,000.

Guarantee  
fund of  
domestic  
automobile  
insurance  
exchange

(4) In the case of an automobile insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection (2) shall, during the first year of operation of the exchange, be maintained at an amount not less than \$10,000, and thereafter not less than \$25,000.

Deficiency

(5) If at any time the amounts on hand are less than the foregoing requirements, the subscribers or the attorney shall forthwith make up the deficiency.

Use of funds  
supplied to  
make up  
deficiency

(6) Where funds, other than those that accrued from premiums or deposits of subscribers, are supplied to make up a deficiency as herein provided for, such funds shall be deposited and held for the benefit of subscribers under such terms and conditions as the Superintendent may require so long as a deficiency exists, and may thereafter be returned to the depositor.

Interpre-  
tation

(7) In this section, "approved securities" means securities that are authorized for investment by section 340. R.S.O 1970, c. 224, s. 335.

Investment  
of surplus  
funds and  
reserve

**340.**—(1) If the principal office of the exchange is in Ontario, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities authorized by Part XVII for the investment of the reserve funds of a joint stock insurance company.

Evidence  
as to  
investments

(2) If the principal office of the exchange is outside Ontario, it shall be a condition precedent to the issue of a licence under this Act that evidence satisfactory to the Superintendent is filed with him showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve

funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate. R.S.O. 1970, c. 224, s. 336.

**341.**—(1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber. Contracts for subscribers only

(2) No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any licensed reciprocal or inter-insurance exchange unless such exchange operates on the same underwriting standards. R.S.O. 1970, c. 224, s. 337. Reinsurance in another exchange

**342.**—(1) No person shall act as attorney, or for or on behalf of an attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, until a licence has been issued and is in force. Attorney not to act until licence granted

(2) Every person who, in contravention of subsection (1), undertakes or effects or agrees or offers to undertake or effect an exchange of reciprocal contracts of indemnity or inter-insurance, or any act or transaction in connection therewith, is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500. R.S.O. 1970, c. 224, s. 338. Offence

**343.**—(1) Where a licensed exchange or attorney contravenes any provision of this Act, the licence of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but the suspension or revocation does not affect the validity of any reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts. Suspension or revocation of licence

(2) Notice of such suspension or revocation shall be given by the Superintendent in at least two successive issues of *The Ontario Gazette* as soon as reasonably may be after the suspension or revocation. R.S.O. 1970, c. 224, s. 339. Notice

**344.** The attorney for a licensed exchange shall, on or before the 1st day of March in each year, pay to the Treasurer of Ontario an annual tax in respect of all premiums or deposits collected by the exchange of an amount equal to and calculated in the same manner as under section 66 of the *Corporations Tax Act*, if Annual tax R.S.O. 1980, c. 97

such premiums or deposits had been received by a licensed insurer, and payment thereof shall accompany the annual statement filed with the Superintendent. 1973, c. 124, s. 19.

Fire insurance in unlicensed exchanges may be effected outside Ontario

**345.** Notwithstanding anything in this Act, any person may insure against fire any property situated in Ontario in an exchange not licensed under this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside Ontario and without any solicitation in Ontario directly or indirectly on the part of the insurer. R.S.O. 1970, c. 224, s. 341.

## PART XIV

### AGENTS, BROKERS AND ADJUSTERS

#### LICENCES OF INSURANCE AGENTS

Licensing agent

**346.**—(1) The Superintendent may issue to any person who has complied with this Act a licence authorizing such person to carry on business as an insurance agent subject to this Act, to the regulations and to the terms of the licence.

Classes of licences

(2) Licences so issued shall be of three classes, that is,

(a) licences for life insurance, or life and accident insurance, or life and accident and sickness insurance; or

(b) licences for accident and sickness insurance; or

(c) licences for all classes of insurance other than life insurance.

Issue of licence

(3) Upon written notice to the Superintendent that a licensed insurer has appointed a person to act as his agent in Ontario and upon due application of such person and payment by him of the prescribed fee, the Superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence and intends to hold himself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence that shall state in substance that the holder is, during the term of the licence, authorized to carry on in Ontario the business of an insurance agent.

Notice of appointment of agent

(4) Such notice of appointment by an insurer shall be upon a form furnished by the Superintendent and shall state that the appointee has been authorized in writing by the

insurer to act as agent in the soliciting of and negotiating for insurance and shall be accompanied by a sworn statement of the appointee on a form furnished by the Superintendent giving the name, age, residence and present occupation of the applicant and his occupation for the five years next preceding the date of the notice and particulars of any other employment in which he is engaged and such other information as the Superintendent may require.

(5) Where the applicant is the appointee of an insurer carrying on in Ontario the business of life insurance, or life and accident insurance, or life and accident and sickness insurance, the licence shall expressly limit the authorization of the agent to the class of insurance for which the insurer is licensed, and, where the applicant is the appointee of an insurer carrying on in Ontario any class or classes of insurance business other than life insurance, the licence shall expressly exclude the business of life insurance, but nothing herein prevents the issue to the same applicant of two licences including all classes of insurance if due application has been made for two licences. Limitations of licence

(6) Where the agency, upon notice of which a licence is issued, is terminated, notice in writing shall forthwith be given by the insurer to the Superintendent of the termination, with the reason therefor, and thereupon the licence is *ipso facto* suspended, but it may be revived subject to the approval of the Superintendent upon filing of notice of a new agency appointment and upon payment of the prescribed fee. Notice of termination of agency

(7) An insurer who fails to notify the Superintendent within thirty days of the termination of an agency appointment as required by subsection (6) is guilty of an offence. Failure to give notice

(8) A licence issued under this section or section 347 may be revoked by the Superintendent if, after due investigation and a hearing, he determines that the holder of the licence, Revocation

- (a) has contravened any provision of this Act or the regulations in his operations as an insurance agent; or
- (b) has made a material misstatement in the application for the licence; or
- (c) has been guilty of a fraudulent practice; or
- (d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business

for which the licence was granted, by reason of anything done or omitted in or about such business under the authority of the licence; or

- (e) has employed upon salary or otherwise any person whose application for licence as an insurance agent has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the Superintendent.

Advisory  
board to  
hold hearing  
and report

(9) In determining the granting or refusal of an application for a licence or renewal of licence, or the revocation of an existing licence under this section or section 347, the Superintendent may, and shall when so requested in writing by the applicant or licensee, appoint an advisory board consisting of,

- (a) a representative of insurers;
- (b) a representative of agents; and
- (c) a representative of the Superintendent,

which shall hold a hearing and make a report to the Superintendent with such recommendation as it considers fit.

Chairman  
of board

(10) The representative of the Superintendent upon the advisory board shall act as chairman and, for the purposes of his duties in connection with the investigation and hearing contemplated by subsection (9), has the same powers as are vested in the Superintendent by section 3.

Term and  
renewal of  
licence

(11) A licence issued hereunder expires at such time as the regulations provide unless automatically suspended by notice under subsection (6) or unless revoked or suspended by the Superintendent; but such licence may, in the discretion of the Superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the Superintendent giving such information as he may require, accompanied by a certificate of agency appointment of a licensed insurer and payment of the prescribed fee, without requiring anew the detailed information hereinbefore specified.

Authority  
of agents

(12) The holder of a licence under this section as agent for insurance other than life insurance may, during the term and validity of his licence, act as agent for any licensed insurer within the limits prescribed by his licence, and may act as an insurance broker in dealing with licensed

insurers without other or additional licences but may not act as agent or broker directly, or indirectly through a broker licensed for business with unlicensed insurers under section 350 or otherwise, in dealing with unlicensed insurers.

(13) No life insurance agent shall be licensed to act as agent for more than one insurer transacting life insurance, and the name of such insurer shall be specified in the licence, and no such agent shall represent himself to the public by advertisement or otherwise as the agent of more than one such insurer, but where such an agent is unable to negotiate insurance on behalf of an applicant for insurance with the insurer for which he is the authorized agent, such agent has the right to procure such insurance from another insurer if such other insurer obtains in each case the consent in writing of the insurer for which such agent is the authorized agent, and files a copy of such consent with the Superintendent.

Authority  
of life  
insurance  
agent

(14) A collector of insurance premiums who does not solicit application for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal thereof may carry on such business without a licence therefor if his collection fee does not exceed 5 per cent of any amount collected. R.S.O. 1970, c. 224, s. 342 (1-14).

Collectors

(15) A member of a duly licensed pension fund association, other than a salaried employee who receives commission, may, without a licence, solicit persons to become members of said association. 1972, c. 66, s. 12.

Members of  
insurance  
corporations

(16) An officer or a salaried employee of the head office of a duly licensed fraternal society who does not receive commission may, without a licence, solicit insurance contracts on behalf of the society.

Officers of  
fraternal  
societies

(17) Any member not an officer or salaried employee described in subsection (16) may, without a licence, solicit insurance contracts on behalf of the society unless he devotes or intends to devote more than one-half of his time to soliciting such contracts or has in the previous licence year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

Members  
of fraternal  
societies

(18) Unless the Superintendent otherwise directs, an officer or salaried employee of a licensed insurer who does not receive commissions, or an attorney or salaried employee of a reciprocal or inter-insurance exchange at which no commission is paid except to such attorney, may, without a

Salaried  
officials,  
etc., acting  
without  
licence

licence, act for such insurer or exchange in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer or exchange may lawfully undertake, but officers or employees whose applications for licences as insurance agents or salesmen have been refused or whose licences have been revoked or suspended may not so act without the written approval of the Superintendent, and, in the cases of insurers authorized to undertake life insurance, only the officers and salaried employees of the head office who do not receive commissions may so act without a licence.

Licensing of  
transporta-  
tion ticket  
agents

(19) Notwithstanding anything in this Act, the Superintendent may issue a licence to a transportation company authorizing it, by its employees in the province, to act as an agent for a licensed insurer with respect to accident insurance and such other classes of insurance as he approves.

Regulations

(20) The Lieutenant Governor in Council may make regulations,

- (a) prescribing requirements, qualifications and conditions for the granting or renewal of licences;
- (b) providing for the holding of examinations for applicants for licences or renewals of licences;
- (c) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;
- (d) prescribing the grounds upon which a licence may be revoked, suspended or not renewed;
- (e) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents;
- (f) requiring agents to supply information and make returns to the Superintendent;
- (g) requiring an agent to furnish a bond or other security and fixing the amount, form, requirements and terms thereof;
- (h) prescribing forms and providing for their use; and
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this section.

(21) Regulations made under subsection (20) are in addition <sup>Scope of regulations</sup> to the provisions of this section notwithstanding that the regulations concern a matter provided for in this section.

(22) Every person who assumes to act as an agent without <sup>Offence</sup> the licence required by this section, or while his licence as such is suspended, is guilty of an offence. R.S.O. 1970, c. 224, s. 342 (16-22).

#### LICENCES OF INSURANCE SALESMEN

**347.**—(1) The Superintendent may issue to any person <sup>Licences of salesmen</sup> who has complied with this Act a licence authorizing such person to act as a salesman on behalf of a licensed insurance agent or broker in negotiating contracts of insurance or in the negotiation of the continuance or renewal of any contracts such agent or broker may lawfully undertake.

(2) Licences so issued shall be for any classes of insurance, <sup>Type of insurance</sup> other than life insurance. R.S.O. 1970, c. 224, s. 343 (1, 2).

(3) Upon written notice to the Superintendent that a <sup>Issue of licence</sup> licensed agent or broker has appointed a person as a salesman to act on his behalf, and upon due application of such person and payment by him of the prescribed fee, the Superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence, and has not been refused a licence as an insurance agent or broker, or had such a licence suspended or revoked, issue to the applicant a licence stating in substance that the holder is, during the term of the licence, authorized to act in Ontario as a salesman of such agent or broker. R.S.O. 1970, c. 224, s. 343 (3); 1972, c. 66, s. 13.

(4) Such notice of appointment by a licensed agent or broker, other than a life insurance agent, shall be upon a <sup>Form of notice of appointment</sup> form furnished by the Superintendent and shall state that the appointee has been authorized in writing by the agent or broker to act as a salesman in the soliciting of and negotiating for insurance and shall be accompanied by a sworn statement of the appointee on a form furnished by the Superintendent giving his name, age, residence, the amount of monthly salary he is to receive for such employment, his present occupation and occupation for the five years next preceding the date of notice, particulars of any other employment in which he is engaged, and such other information as the Superintendent may require.

Licence to  
exclude life  
insurance

(5) The licence shall expressly exclude the business of life insurance, but nothing herein prevents the issuance to the same applicant of a licence as a life insurance agent, if due application is made upon written notice of appointment by a licensed insurer.

Notice of  
termination  
of employ-  
ment

(6) Where a licensed salesman ceases to be employed by the appointing agent or broker, notice in writing shall forthwith be given by the agent or broker to the Superintendent of such termination of employment with the reason therefor, and thereupon the licence is *ipso facto* suspended, but such licence may be revived subject to the approval of the Superintendent upon filing a notice of the salesman's appointment by another agent or broker, and upon payment of the prescribed fee.

Failure  
to give  
notice

(7) An agent or broker who fails to notify the Superintendent within thirty days of the termination of a salesman's appointment as required by subsection (6) is guilty of an offence.

Term and  
renewal  
of licence

(8) A licence issued under this section expires on the 30th day of September next after its issue unless automatically suspended by notice under subsection (6) or unless revoked or suspended by the Superintendent, but such licence may, in the discretion of the Superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the Superintendent giving such information as he may require, accompanied by a certificate of a licensed agent or broker respecting the salesman's appointment, and payment of a fee of \$10, without requiring anew the detailed information hereinbefore specified.

Who sales-  
man may  
act for

(9) The holder of a licence issued under this section may, during the term and validity of his licence, act as salesman only for the agent or broker by whom he is appointed and within the limits of such agent's or broker's licence for classes of insurance other than life insurance.

Offence

(10) Every person who assumes to act as a salesman of an insurance agent or broker without the licence required by this section, or while his licence as such is suspended, is guilty of an offence. R.S.O. 1970, c. 224, s. 343 (4-10).

#### LICENCES OF INSURANCE BROKERS

Licences of  
insurance  
brokers

**348.**—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in Canada a licence to act in Ontario as an insurance broker to negotiate, continue or renew contracts of insurance, other than life insurance, or to place risks or effect insurance with any duly licensed insurer or its agent.

(2) The applicant for such a licence shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation at the time of making the application, his occupation for the five years next preceding the date of the application and such other information as the Superintendent may require, and the applicant shall declare that he intends to hold himself out publicly and carry on business in good faith as an insurance broker and he shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario. Application

(3) If the Superintendent is satisfied with the statement and information required by subsection (2), he shall issue the licence applied for, and the licence expires on the 30th day of September in each year unless sooner revoked or suspended. Superintendent may issue licence

(4) The licence may, in the discretion of the Superintendent, be renewed upon payment of the prescribed fee for each succeeding year without requiring anew the detailed information hereinbefore specified. Renewal of licence

(5) The Superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and, after a hearing, revoke the licence while so suspended, and shall notify the licensee in writing of such revocation or suspension and may publish a notice of such revocation or suspension in such manner as he considers necessary for the protection of the public. Revocation or suspension of licence

(6) Any person, other than a licensed agent, who assumes to act as an insurance broker without a licence or during a suspension of his licence is guilty of an offence. Offence

(7) Subject to section 351, a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to him of a licence under this section. Licence not to import agency

R.S.O. 1970, c. 224, s. 344.

**349.** In addition to issuing insurance brokers' licences giving full authority to the licensee as set forth in the preceding sections, the Superintendent may issue insurance brokers' licences limiting the authority of the licensee to the extent agreed upon with the applicant and set forth in the licence, but in other respects the granting of such licences and the brokers so licensed are subject to this Act. R.S.O. 1970, c. 224, s. 345. Licence may be granted limiting authority of licensee

BROKERS' LICENCES FOR BUSINESS WITH UNLICENSED  
INSURERS

Licence to  
special  
insurance  
broker

**350.**—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in Ontario a licence to act as a special insurance broker to negotiate, continue or renew contracts of insurance in Ontario, other than contracts of life insurance, with insurers not authorized to transact such business in Ontario.

Application

(2) The applicant for such a licence shall file with the Superintendent a written application under oath as prescribed by section 348.

Expiration  
of licence

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the licence applied for subject to suspension or revocation in the discretion of the Superintendent, which licence expires on the 30th day of June in each year unless sooner suspended or revoked.

Renewal  
of licence

(4) The licence may, in the discretion of the Superintendent, be renewed for each succeeding year upon payment of the prescribed fee without requiring anew the detailed information specified by section 348.

Security

(5) A person shall, before receiving such licence, execute and deliver to the Superintendent security to the satisfaction of the Superintendent in the sum of not less than \$5,000 that the licensee will faithfully comply with this Act.

When  
licensee  
may effect  
insurance  
with  
unlicensed  
insurers

(6) Where sufficient insurance in Ontario cannot be obtained at reasonable rates or on the form of contract required by the insured from insurers licensed to do business in Ontario, the person named in such licence may effect insurance with unlicensed insurers, but shall in the case of every insurance effected under this section obtain from the insured a signed and dated statement describing the risk to be insured and the amount of insurance required and stating that the insurance cannot be obtained in licensed companies and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in Ontario, and the person named in such licence shall, within ten days after the placing of such insurance with unlicensed insurers, submit to the Superintendent a statement setting forth the name of the insured, a description of the risk insured, the full names of the unlicensed insurers, and the amount of insurance placed with each and the rate and amount of premium paid to each.

(7) Such a licensee shall keep a separate account of insurance effected by him under his licence in books in the form prescribed by the Superintendent, which shall be open to inspection by the Superintendent or any officer of the Ministry. Records to be kept, inspection

(8) Within ten days after the end of each month, every such licensee shall make to the Superintendent a return under oath in the form and manner by him prescribed, containing particulars of all insurances effected under this section by the licensee during such month. Monthly return

(9) In respect of all premiums on insurance effected under a licence, the licensee shall pay to the Superintendent such taxes as would be payable if such premiums had been received by a licensed insurer, and payment thereof shall accompany the monthly return provided for in subsection (8). Tax on premiums

(10) On it being shown to the satisfaction of the Minister that all insurances effected under this section are no longer in force or have been reinsured, the licensee is entitled to a release or cancellation of his security. Release of security given by licensee

(11) A licensee under this section shall accept applications for insurance with unlicensed insurers only from the insured or another licensee under this section and shall not receive any such application from, or pay or allow compensation or anything of value in respect of such applications to, an agent or broker not licensed under this section, and any contract of insurance with an unlicensed insurer made by or through any agent or broker not licensed under this section shall be deemed to be unlawfully made within the meaning of section 353. Prohibition against accepting business from agents and brokers

(12) A person licensed under this section who contravenes any of its provisions is guilty of an offence and, in addition to any other penalty, shall forfeit his licence. R.S.O. 1970, c. 224, s. 346; 1972, c. 1, s. 1. Forfeiture of licence

#### PROVISIONS RELATING TO AGENTS AND BROKERS GENERALLY

**351.**—(1) An agent or broker shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary. Agent or broker receiving premiums

(2) This section does not apply to life insurance. R.S.O. 1970, c. 224, s. 347. Exception

Fraudulent  
representa-  
tions

**352.** An agent or broker who knowingly procures, by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy is guilty of an offence. R.S.O. 1970, c. 224, s. 348.

Personal  
liability of  
agent for  
unlawful  
contracts

**353.** An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not licensed to undertake insurance in Ontario in the same manner as if such agent or broker were the insurer. R.S.O. 1970, c. 224, s. 349.

#### LICENCES OF INSURANCE ADJUSTERS

Licences of  
insurance  
adjusters

**354.**—(1) The Superintendent may, upon the payment of the prescribed fee, issue to any suitable person a licence to act as an adjuster, but a person licensed as an insurance agent or broker under this Part shall not receive a licence to act as an insurance adjuster.

Application  
to be filed  
with Super-  
intendent

(2) The applicant for such licence shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the Superintendent may require, and the applicant shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario.

Licence to  
be in force  
one year

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the licence, which expires on the 30th day of June in each year unless sooner revoked or suspended.

Renewal  
of licence

(4) A licence may, in the discretion of the Superintendent and upon payment of the prescribed fee, be renewed for each succeeding year without requiring anew the detailed information hereinbefore specified.

Revocation  
or suspension  
of licence

(5) The Superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the licence while so suspended, and shall notify the licensee in writing of the revocation or suspension.

Application  
of s. 346  
(8-10)

(6) The provisions of subsections 346 (8), (9) and (10), with reference to grounds of revocation of licence, to the appointment of an advisory board and to the power of the chairman thereof in

the matter of insurance agents' licences, apply with necessary modifications to applicants and licensees under this section, except that a representative of adjusters shall replace a representative of agents on the board.

(7) A person who acts as an adjuster without such a licence or during a suspension of his licence is guilty of an offence. Offence  
R.S.O. 1970, c. 224, s. 350.

**355.**—(1) Subject to subsection (2), no person shall, on behalf of himself or another person, directly or indirectly, Prohibition against public adjusters of motor accident claims

(a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or

(b) hold himself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

(2) This section does not apply to a barrister or solicitor acting in the usual course of his profession. Exception  
R.S.O. 1970, c. 224, s. 351.

#### PARTNERSHIP LICENCES OF AGENTS, BROKERS AND ADJUSTERS

**356.**—(1) Licences as agents, brokers or adjusters may be issued to partnerships on the conditions hereinbefore specified for the issue of such licences to individuals except as otherwise provided in this section. Licences to partnerships

(2) Each member of the partnership shall file the statement or application and pay the prescribed fee, including a written request that the licence be issued in the name of the partnership, and the licence may be revoked or suspended as to one or more members of the partnership. Statement to be filed by each partner

(3) If the partnership is terminated before the expiration of the licence, the partners shall forthwith give notice to the Superintendent, who shall thereupon revoke the licence. Notice of termination of partnership

(4) A member of a partnership licensed under this section who contravenes any of its provisions is guilty of an offence. Offence  
R.S.O. 1970, c. 224, s. 352.

CORPORATION LICENCES OF AGENTS, BROKERS AND  
ADJUSTERSLicences to  
corporations

**357.**—(1) Licences as agents, brokers or adjusters may be issued to any corporation that is incorporated expressly for the purpose of acting as an insurance agent, broker or adjuster or for that and such other purposes as the Superintendent expressly approves of and where the corporation has been incorporated under the *Business Corporations Act* after the 30th day of June, 1971, the articles of incorporation shall have been approved by the Superintendent prior to incorporation. 1971, c. 84, s. 19.

R.S.O. 1980,  
c. 54When  
licences  
not to be  
issued

(2) Licences as agents or brokers shall not be issued to a corporation whose head office is outside Canada or if it appears to the Superintendent that the application is made for the purpose of acting as agent or broker wholly or chiefly in the insurance of property owned by the corporation or by its shareholders or members, or in the placing of insurance for one person, firm, corporation, estate or family. R.S.O. 1970, c. 224, s. 353 (2).

Prohibition  
on licensing  
non-residents

(3) No licence shall be issued to a corporation that carries on business as an insurance agent, broker or adjuster if the majority of its issued and outstanding shares that entitle the holder to any voting rights are owned beneficially or otherwise by a non-resident of Canada unless such corporation was so licensed on the 27th day of April, 1972.

Definition of  
non-resident

(4) For the purpose of this section, non-resident means,

- (a) an individual who is not ordinarily resident in Canada;
- (b) a company incorporated, formed or otherwise organized, elsewhere than in Canada;
- (c) a company that is controlled directly or indirectly by non-residents as determined in clause (a) or (b);
- (d) a trust established by a non-resident as defined in clause (a), (b) or (c), or a trust in which non-residents, as so defined, have more than 50 per cent of the beneficial interest; or
- (e) a company that is controlled directly or indirectly by a trust mentioned in clause (d).

Prohibition  
of a non-  
resident to  
amalgamate

(5) A corporation that was licensed as an agent, broker or adjuster, on or before the 27th day of April, 1972, and whose issued shares entitling the holders thereof to voting

rights were more than 50 per cent owned, as of that date, beneficially or otherwise, by one or more non-residents of Canada is not entitled to continue to hold a licence if it amalgamates, unites, merges, acquires the assets or business of, or acquires the shares of any other licensed agent, broker or adjuster. 1972, c. 66, s. 14.

(6) Except as otherwise provided in this section, such licences, and the corporation and officers of the corporation named in the licence, are subject to the provisions of this Act with respect to agents, brokers and adjusters. Provisions as to licences

(7) The licence shall specify the officers who may act thereunder in the name and on behalf of the corporation and every such officer shall file a statement or application and pay the prescribed fee for individual agents, brokers or adjusters, but employees who do not receive commissions and who perform office duties only on behalf of the corporation may so act by authority of the corporation licence although not named therein. Officers who may act under licence

(8) A licence may be revoked or suspended as to the corporation or as to any officers named therein. Revocation of licence

(9) If the principal business of a corporation licensed under this section is not the business of an insurance agent or broker or adjuster, the Superintendent may require from such a corporation such information as he considers necessary in respect to the corporation, its officers and affairs and may make such examination of its books and affairs as he considers necessary for the purposes of this Act. Superintendent may require information

(10) A corporation licensed under this section shall forthwith notify the Superintendent in writing of its dissolution or the revocation of its instrument of incorporation and upon receipt of such notice the Superintendent shall forthwith revoke the licence. Notice of dissolution of corporation

(11) An officer specified in the licence who contravenes any of the provisions of this section is guilty of an offence and is personally liable therefor, although such contravention is committed in the name and on behalf of the corporation, and the corporation is liable for any such contravention the responsibility for which cannot be placed upon any such officer. R.S.O. 1970, c. 224, s. 353 (3-8). Personal liability of officers

#### PROVISIONS RELATING TO AGENTS, BROKERS AND ADJUSTERS GENERALLY

**358.** A person who, not being duly licensed as an agent, broker or adjuster, represents or holds himself out to the public as being such an agent, broker or adjuster, or as Acting as agent, broker or adjuster without authority

being engaged in the insurance business by means of advertisements, cards, circulars, letterheads, signs, or other methods, or, being duly licensed as such agent, broker or adjuster, advertises as aforesaid or carries on such business in any other name than that stated in the licence, is guilty of an offence. R.S.O. 1970, c. 224, s. 354.

Agent to be deemed to hold premium in trust for insurer

**359.**—(1) An agent or broker who acts in negotiating, or renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or substitute for money as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and, if he fails to pay the premium over to the insurer within fifteen days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the company, he is entitled, such failure is *prima facie* evidence that he has used or applied the premium for a purpose other than paying it over to the insurer. R.S.O. 1970, c. 224, s. 355.

Agent to be deemed to hold money in trust for payee under policy

(2) An agent or broker who acts in negotiating or renewing or continuing a contract of insurance with a licensed insurer, and who receives any money or substitute for money for payment to a person in respect of the contract of insurance shall be deemed to hold such money in trust for the person entitled thereto, and, if he fails to pay the money over to such person within fifteen days after written demand made upon him therefor, less his commission and any deductions to which he is entitled, such failure is *prima facie* evidence that he has used or applied the money for a purpose other than paying it over to the person entitled. 1973, c. 124, s. 20.

No compensation to be paid by insurer to person not licensed

**360.**—(1) No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not a duly licensed insurance agent or broker or a person acting under subsections 346 (15) and (18) and whoever knowingly contravenes this subsection is guilty of an offence.

Agreement as to premium other than as in policy prohibited

(2) No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy, or any

other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in Ontario, and an insurer or other person who contravenes this subsection is guilty of an offence. R.S.O. 1970, c. 224, s. 356 (1, 2).

(3) Nothing in this section affects any payment by way of dividend, bonus, profit or savings that is provided for by the policy, or shall be construed so as to prevent an insurer compensating a *bona fide* salaried employee of its head office or a branch office in respect of insurance issued by the employing insurer upon the life of such employee or upon the employee's property or interests in Ontario or so as to require that such employee shall be licensed as an agent under this Act to affect such insurance. 1972, c. 66, s. 15. Exceptions

**361.**—(1) Any person who induces or attempts to induce, directly or indirectly, an insured to, Twisting life insurance prohibited

- (a) lapse;
- (b) surrender for cash paid up or extended insurance, or other valuable consideration; or
- (c) subject to substantial borrowing whether in a single loan or over a period of time,

any contract with one insurer of life insurance that contains provision for cash surrender and paid up values for the purpose of effecting a contract of life insurance with another insurer is guilty of an offence.

- (2) A person licensed as an agent for life insurance who, Misleading statements, comparisons or coercion prohibited
- (a) makes a false and misleading statement or representation in the solicitation or registration of insurance; or
  - (b) makes or delivers any incomplete comparison of any policy or contract of insurance with that of any other insurer in the solicitation or registration of insurance; or
  - (c) coerces or proposes, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract,

is guilty of an offence.

Regulations  
as to  
replacement

(3) The Lieutenant Governor in Council may make regulations,

- (a) regulating the replacement of an existing life insurance contract by another contract of life insurance;
- (b) prescribing the duties of insurers and agents in connection with replacement of life insurance contracts. 1971, c. 84, s. 20.

Returns to  
Superin-  
tendent

**362.** Every licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he requires showing all persons, partnerships and corporations duly authorized as its agents in Ontario, and of persons, partnerships or corporations to whom it has, within such period as the form of return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting to do so. R.S.O. 1970, c. 224, s. 358.

Appeal

**363.** If the Superintendent refuses, suspends or revokes a licence applied for by or issued to a broker or adjuster, the Superintendent shall state in writing his reasons therefor and any person who considers himself aggrieved by the decision of the Superintendent may appeal therefrom to the Minister and, in case of an appeal, the decision of the Superintendent does not take effect until after the hearing and disposition thereof by the Minister. R.S.O. 1970, c. 224, s. 359.

Limited or  
conditional  
licence

**364.** A licence may be issued to an agent or adjuster subject to such limitations and conditions as the Superintendent may prescribe. R.S.O. 1970, c. 224, s. 360.

## PART XV

### RATES AND RATING BUREAUS

Interpre-  
tation

**365.** In this Part, "rating bureau" means an association or body, incorporated or unincorporated, created or organized for the purpose of fixing or promulgating rates of premium payable upon contracts of insurance in Ontario, or the terms or conditions of such contracts, or for these and other purposes, or that assumes to fix or promulgate such rates, terms or conditions by agreement among the members thereof or otherwise. R.S.O. 1970, c. 224, s. 361.

**366.**—(1) A rating bureau shall, forthwith after adoption, file in the office of the Superintendent duly certified copies of its constitution, articles of association and by-laws, and a list of its members and their addresses, and thereafter shall file in the office of the Superintendent every amendment, revision or consolidation of its constitution, articles of association and by-laws, and notice of the admission of new members and the withdrawal of former members, within thirty days after the passing or adoption of such amendment, revision or consolidation, or after the admission or withdrawal of such members.

Filing of  
constitution  
by-laws,  
etc.

(2) A rating bureau and a licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing every schedule of rates fixed, made or charged by them, together with such further or other information concerning such rates as he may require.

Return of  
rates

(3) A rating bureau and a licensed insurer shall give to the Superintendent at least ten days notice of any change in the schedules of rates or rules applicable thereto filed with the Superintendent under subsection (2), and shall file with the Superintendent amended schedules duly verified under oath showing particulars of all such changes before their effective date.

Changes  
in rates

(4) A rating bureau or licensed insurer that, having filed its schedules of rates under this section, fixes, makes or charges a rate or receives a premium that deviates from the schedules of rates fixed and filed with the Superintendent for, and the rules applicable to, any risk or class of risks is guilty of an offence. R.S.O. 1970, c. 224, s. 362.

Offence for  
deviation  
from filed  
rate

**367.** No rating bureau and no insurer authorized to transact the business of insurance in Ontario shall fix or make a rate or schedule of rates or charge a rate for automobile insurance to a group of persons by reason of such group being engaged in a trade, calling, profession or occupation, or by reason of membership in a guild, union, society, club or association or by reason of common employment or by reason of common occupancy of the same building or group of buildings or for any other reason that would result in a lower cost to an individual in such group than such individual would have had to pay if insured individually, and an insurer or other person who contravenes this section is guilty of an offence. R.S.O. 1970, c. 224, s. 363.

Preferential  
rates for  
groups of  
persons  
prohibited

**368.**—(1) Nothing in this Act prohibits the fixing or charging of a special rate for the insurance of two or more vehicles owned by and registered in the name of the same

Where  
special rate  
permitted

person, except where the owner is engaged in the business of leasing the vehicles and the vehicles are the subject of a leasing agreement for a period in excess of thirty days.

Idem

(2) Nothing in this section prohibits the fixing or charging of a special rate for the insurance of two or more vehicles of a lessor that are rented to the same lessee. R.S.O. 1970, c. 224, s. 364.

Discrimina-  
tion in rates

**369.**—(1) No rating bureau and no insurer authorized to transact the business of insurance in Ontario shall fix or make a rate or schedule of rates or charge a rate that discriminates unfairly between risks in Ontario of essentially the same physical hazards in the same territorial classification, or, if the rate is a fire insurance rate, that discriminates unfairly between risks in the application of like charges or credits or that discriminates unfairly between risks of essentially the same physical hazards in the same territorial classification and having substantially the same degree of protection against fire.

Commence-  
ment of  
section

(2) This section does not come into force until a day to be named by the Lieutenant Governor by his proclamation. R.S.O. 1970, c. 224, s. 365.

Authority  
to require  
information  
to be filed

**370.**—(1) The Superintendent may, on written complaint by an insurer or an insured that discrimination exists or upon such information filed with him as the Superintendent considers sufficient to justify an investigation, give notice in writing to a rating bureau or insurer, requiring such rating bureau or insurer to file with the Superintendent any schedules of rates or particulars showing how any specific rate is made up and any other information that he may require.

Time limit  
for filing  
information

(2) Such rating bureau or insurer shall, within five days after the receipt of the notice, file with the Superintendent the schedules, particulars and other information required.

Issue of order  
prohibiting  
rate

(3) The Superintendent may, within thirty days after the receipt of the information required, make an order prohibiting any rate that, in his opinion, contravenes section 369 and directing that the discrimination be removed.

Notice of  
order

(4) The Superintendent shall forthwith deliver to the rating bureau or insurer a copy of such order and reasons therefor and shall cause notice thereof to be published forthwith in *The Ontario Gazette*.

(5) No rating bureau or insurer shall remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it be made to appear to the satisfaction of the Superintendent that such increase is justifiable. Rating bureau not to increase rates

(6) A rating bureau, insurer or other person failing to comply with such order is guilty of an offence. Offence

(7) An order made under this section does not take effect for a period of ten days after its date and is subject to appeal within that time in the manner provided by section 11 and, in the event of an appeal, the order of the Superintendent does not take effect pending the disposition of the appeal. Appeal

(8) This section does not come into force until a day to be named by the Lieutenant Governor by his proclamation. Commencement of section  
R.S.O. 1970, c. 224, s. 366.

**371.**—(1) It is the duty of the Superintendent, after due notice and a hearing before him, to order an adjustment of the rates for automobile insurance whenever it is found by him that any such rates are excessive, inadequate, unfairly discriminatory or otherwise unreasonable. Superintendent empowered to order rate adjustment

(2) An order made under this section does not take effect for a period of ten days after its date, and is subject to appeal within that time by any insured, insurer or rating bureau, in the manner provided by section 11 and, in the event of an appeal, the order of the Superintendent does not take effect pending the disposition of the appeal. Appeal from order  
R.S.O. 1970, c. 224, s. 367 (1, 2).

(3) The Attorney General shall be served with notice of any such appeal and is entitled to be heard by counsel upon the hearing thereof. Attorney General to be heard  
R.S.O. 1970, c. 224, s. 367 (3);  
1972, c. 1, s. 9 (7).

(4) A rating bureau, insurer or other person failing to comply with such order is guilty of an offence. Offence

(5) This section does not come into force until a day to be named by the Lieutenant Governor by his proclamation. Commencement of section  
R.S.O. 1970, c. 224, s. 367 (4, 5).

**372.** The Superintendent or any person authorized under his hand and seal of office shall at all times have access to all such books, securities or documents of a rating bureau or insurer as are related to the schedules of rates Superintendent to have access to books

of the rating bureau or insurer, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access is guilty of an offence. R.S.O. 1970, c. 224, s. 368.

**Inquiry**

**373.**—(1) The Superintendent may inquire into any question that an insurer, insured or a rating bureau may bring before him with regard to insurance rates fixed by a rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

**Report**

(2) The Superintendent shall not make an order pursuant to an inquiry under this section, but the result of the inquiry shall be reported in his annual report. R.S.O. 1970, c. 224, s. 369.

## PART XVI

### AMALGAMATION, TRANSFER AND REINSURANCE

**Interpre-  
tation**

**374.** In sections 375 to 384, “reinsurance” means an agreement whereby contracts made in Ontario by a licensed insurer incorporated or organized under the laws of Ontario or any class or group of such contracts are undertaken or reinsured by another insurer either by novation, transfer or assignment or as a result of amalgamation of the insurers. R.S.O. 1970, c. 224, s. 370; 1971, c. 84, s. 21.

**Application**

**375.**—(1) Nothing in this Part affects contracts of reinsurance of individual risks made by insurers in the ordinary course of business.

**Amalgama-  
tion:  
compliance  
with law  
where  
incorporated**

(2) In the case of the amalgamation of insurers, if one of the contracting insurers is an insurer not incorporated or organized under the law of Ontario, the Superintendent shall not recommend that the agreement be approved by the Lieutenant Governor in Council as hereinafter provided until it has been established to his satisfaction that the insurers party to the agreement have fully complied with the requirements of the law of the legislative authority under which the insurer was incorporated or organized, but a certificate of the supervising insurance official appointed by such legislative authority that such insurer has fully complied with the requirements of the law of the authority is sufficient evidence to the Superintendent of that fact. R.S.O. 1970, c. 224, s. 371.

**376.**—(1) An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance, but no such agreement shall be entered into unless and until the permission of the Superintendent has been obtained, and the agreement is not binding or effective until approved by the Lieutenant Governor in Council upon the report of the Superintendent.

Agreement  
to be in  
writing

(2) Upon the approval of the Lieutenant Governor in Council, such agreement is valid and binding notwithstanding any irregularity in procedure or any failure to comply with the procedural provisions of this Part. R.S.O. 1970, c. 224, s. 372.

Irregularity  
not to  
invalidate

**377.** When any such agreement for reinsurance has been entered into, the insurers party thereto shall within thirty days from the date of its execution apply for its approval to the Lieutenant Governor in Council by petition filed with the Superintendent. R.S.O. 1970, c. 224, s. 373.

Approval of  
Lieutenant  
Governor  
in Council

**378.**—(1) In the case of life insurance, before any such application is made, notice thereof together with,

Notice, etc.,  
to share-  
holders and  
policy-  
holders

- (a) a statement of the nature and terms of the agreement for reinsurance;
- (b) an abstract containing the material facts embodied in the agreement under which such reinsurance is proposed to be effected; and
- (c) copies of the actuarial or other reports upon which the agreement is founded, including a report by an independent actuary approved by the Superintendent,

shall be served on the shareholders or members and on the holders of all policies in Ontario, other than industrial policies of each insurer, but the Superintendent may dispense with the service of such documents on the policyholders of the reinsuring insurer.

(2) Such notice and documents shall be served by being transmitted through the post office directed to the registered or other known address of each such shareholder, member and policyholder and within such period that they may be delivered in the due course of delivery at least thirty days before the day appointed for the hearing of the application.

Service

Service on  
members of  
fraternal  
society

(3) Where a fraternal society is a party to an agreement for reinsurance, such notice and documents shall be deemed to be served on the members of the fraternal society if published in the official organ or publication, if any, of such society at least thirty days before the day appointed for the hearing of the application.

Inspection of  
agreement

(4) The agreement under which the reinsurance is proposed to be effected shall be open to the inspection of the policyholders and shareholders at the principal offices of the insurers in Ontario for a period of thirty days after the issue of the abstract herein provided for.

Publication  
of notice

(5) A copy of such notice shall also be published in *The Ontario Gazette* at least thirty days before the application is made. R.S.O. 1970, c. 224, s. 374.

Retiring  
allowance  
for officers  
of fraternal  
society

**379.** In the case of fraternal societies, any such agreement for reinsurance may provide for granting out of the funds of the continuing society to the officer who has been in the service of a society party to such agreement for at least twenty years, and who is more than sixty years of age, and whose services will not be required after the agreement becomes effective, a sum not exceeding the aggregate of his salary or other remuneration for the next preceding three years or, in the alternative, an annual retiring allowance to any such officer during the remaining years of his life not exceeding three-fifths of his average annual salary for the next preceding three years of his service and payable weekly, semi-monthly or otherwise as is agreed upon. R.S.O. 1970, c. 224, s. 375.

Documents  
to be filed  
with Super-  
intendent

**380.** Upon the filing of the petition, the insurers party to the agreement shall deposit with the Superintendent,

- (a) a certified copy of the agreement for reinsurance;
- (b) a statement of the nature and terms of reinsurance;
- (c) certified copies of the statements of assets and liabilities of the insurers party to the agreement;
- (d) certified copies of the actuarial or other reports upon which the agreement is founded;
- (e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer that to the best of their knowledge and belief every payment made or to be made to any person whatsoever on account of the reinsurance is

therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the reinsurance;

- (f) evidence of the service and publication of the notices required by section 378, if any;
- (g) such other information and reports as the Superintendent may require. R.S.O. 1970, c. 224, s. 376.

**381.** Upon receipt of the petition, the Superintendent shall fix a day for hearing the application and notice of the hearing shall be given in *The Ontario Gazette* at least ten days before the date fixed for the hearing. R.S.O. 1970, c. 224, s. 377. Day of hearing

**382.** After hearing the directors, shareholders, members and policyholders and other persons whom he considers entitled to be heard upon the application or giving them an opportunity to be so heard, the Superintendent may recommend that the agreement be approved by the Lieutenant Governor in Council if the Lieutenant Governor in Council is satisfied that no sufficient objection to the arrangement has been established. R.S.O. 1970, c. 224, s. 378. Recommendation of Superintendent

**383.** No such agreement shall be recommended if it appears to the Superintendent that, after the consummation of the reinsurance, an impairment or deficiency will exist in the balance sheet of the continuing or reinsuring insurer when its liabilities (including its capital stock, if any) are calculated according to this Act. R.S.O. 1970, c. 224, s. 379. Impairment of assets of combined or continuing insurer

**384.—**(1) If, in the case of a fraternal society, it appears to the Superintendent from the statement and reports filed with him, or from any examination or inquiry made under this Act, that, owing to depletion in membership or otherwise, the reinsurance of its contracts would be in the best interests of its members, he shall so advise the society and request that the advisability of entering into an agreement for reinsurance be considered. Report by Superintendent where reinsurance advisable

(2) Where, in the opinion of the governing executive authority of the society, a special meeting of the society is desirable for the purpose of considering the request of the Superintendent, the governing executive authority may call a special meeting of the supreme legislative body of the society upon such notice as the governing executive authority considers reasonable and as the Superintendent approves, Special meeting may be called

and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society. R.S.O. 1970, c. 224, s. 380.

Interpre-  
tation

**385.**—(1) In this section, “reinsurance” means an agreement whereby a class or group of contracts that includes contracts made in Ontario by a licensed insurer are undertaken or reinsured by another insurer either by novation, transfer, or assignment or as a result of amalgamation of insurers but does not include a contract of reinsurance of individual risks made by insurers in the ordinary course of business.

Agreement  
in writing

(2) An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance but no agreement with respect to contracts made in Ontario shall be entered into until the approval of the Superintendent has been obtained.

Notice to  
policyholder

(3) Upon the approval of the Superintendent to an agreement for reinsurance under this section, notice thereof, together with a statement of the nature and terms of the agreement for reinsurance, in a form satisfactory to the Superintendent shall be served on all policyholders in Ontario that may be reinsured thereunder, by being sent by mail to the last known address of each such policyholder. 1971, c. 84, s. 22.

Transfer of  
contracts  
where  
insurer  
leaves  
Ontario

**386.** Where under an agreement between an insurer, in this section called the “continuing insurer”, and another insurer, in this section called the “retiring insurer”, in anticipation of the retiring insurer ceasing to do business in Ontario, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer and the retiring insurer ceases to carry on business in Ontario, an insured or other person entitled to rights under those contracts may enforce the rights as though those contracts had been issued by the continuing insurer. R.S.O. 1970, c. 224, s. 381.

## PART XVII

### INVESTMENTS

Interpre-  
tation

**387.** In this Part, “insurer” means an insurer incorporated or organized under the laws of Ontario and in section 388 includes only a joint stock insurance company, a

fraternal society, a mutual insurance corporation licensed to write life insurance and a cash-mutual insurance corporation. R.S.O. 1970, c. 224, s. 382; 1971, c. 84, s. 23.

**388.**—(1) An insurer may invest its funds or any portion thereof in, Investment powers

- (a) the bonds, debentures, stocks or other evidences of indebtedness issued or guaranteed by the government of, Government bonds
  - (i) Canada, Australia, Sri Lanka, India, New Zealand, Pakistan, the Republic of South Africa, the United Kingdom, or any province or state thereof, or Zimbabwe or the Republic of Ireland,
  - (ii) a colony of the United Kingdom,
  - (iii) the United States of America or a state thereof,
  - (iv) a country in which the insurer is carrying on business, or a province or state thereof, or
  - (v) a colony, dependency, territory or possession of any country in which the insurer is carrying on business;
- (b) the bonds, debentures or other evidences of indebtedness issued or guaranteed by a municipal corporation in Canada or elsewhere where the insurer is carrying on business, or by a school corporation in Canada or elsewhere where the insurer is carrying on business, or secured by rates or taxes levied under the authority of the government of a province of Canada on property situate in such province and collectable by the municipalities in which such property is situate; municipal, etc., securities
- (c) the bonds, debentures or other securities issued or guaranteed by the International Bank for Reconstruction and Development; bonds issued or guaranteed by the International Bank, etc.
- (d) the bonds, debentures or other securities issued or guaranteed by the Inter-American Development Bank or by the Asian Development Bank; bonds issued or guaranteed by the International American Development Bank
- (e) the bonds or debentures issued by a corporation that are secured by the assignment to a trust company in Canada of an annual payment that the federal subsidy bonds

Government of Canada has agreed to make, if such annual payment is sufficient to meet the interest falling due on the bonds or debentures outstanding and the principal amount of the bonds or debentures maturing for payment in the year in which the annual payment is made;

bonds  
secured by  
provincial  
subsidy

- (f) the bonds or debentures issued by a charitable, educational or philanthropic corporation that are secured by the payment, assignment or transfer to a trust company in Canada of subsidies, payable by or under the authority of a province of Canada, sufficient to meet the interest as it falls due on the bonds or debentures and the principal amount of the bonds or debentures on maturity;

debentures  
secured by  
statutory  
charge on  
real estate,  
plant or  
equipment

- (g) the bonds, debentures or other evidences of indebtedness issued by a corporation that are fully secured by statutory charge upon real estate or upon the plant or equipment of the corporation used in the transaction of its business, if interest in full has been paid regularly for a period of at least ten years immediately preceding the date of investment in such bonds, debentures or other evidences of indebtedness upon the securities of that class of the corporation then outstanding;

revenue  
bonds

- (h) the bonds, debentures or other evidences of indebtedness issued by an authority or other body without share capital established and empowered pursuant to the law of a country in which the insurer is carrying on business, or of a province or state thereof, or of a colony, dependency, territory or possession thereof in which the insurer is carrying on business, to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity or gas services or facilities and, for any of these purposes, to levy, impose or make taxes, rates, fees or other charges that,
  - (i) may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operating, maintenance and debt service charges, or
  - (ii) in the case of an authority constituted by an Act of a national government, are fixed or authorized by law or subject to the approval

of the government or a minister or ministry thereof or of a body responsible to the government or the minister or ministry;

- (i) the bonds, debentures or other evidences of indebtedness issued by a corporation that are fully secured by a mortgage, charge or hypothec to a trustee or to the insurer upon any, or upon any combination, of the following assets, bonds, etc., secured by mortgage

- (i) real estate or leaseholds,
- (ii) the plant or equipment of a corporation that is used in the transaction of its business, or
- (iii) bonds, debentures or other evidences of indebtedness or shares, of a class authorized by this subsection as investments, or cash balances if such bonds, debentures or other evidences of indebtedness, shares or cash balances are held by a trustee,

and the inclusion, as additional security under the mortgage, charge or hypothec, of any other assets not of a class authorized by this Act as investments shall not render such bonds, debentures or other evidences of indebtedness ineligible as an investment;

- (j) obligations or certificates issued by a trustee to equipment trust certificates finance the purchase of transportation equipment for a corporation incorporated in Canada or the United States of America to be used on railways or public highways, if the obligations or certificates are fully secured by,

- (i) an assignment of the transportation equipment to, or the ownership thereof by, the trustee, and
- (ii) a lease or conditional sale thereof by the trustee to the corporation;

- (k) the bonds, debentures or other evidences of indebtedness issued or guaranteed by, debentures

- (i) a corporation if, at the date of investment, the preferred shares or the common shares of the corporation are authorized as investments by clause (m) or (n), or

- (ii) a corporation if its earnings in a period of five years ended less than one year before the date of investment have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least  $1\frac{1}{2}$  times the annual interest requirements at the date of investment on all indebtedness of or guaranteed by it, other than indebtedness classified as a current liability in its balance sheet, and, if the corporation at the date of investment owns directly or indirectly more than 50 per cent of the common shares of another corporation, the earnings of the corporations during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the corporation shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation, and, for the purpose of this subclause, "earnings" means earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability;

guaranteed  
investment  
certificates

- (l) guaranteed investment certificates issued by a trust company incorporated in Canada if, at the date of investment, the preferred shares or the common shares of the trust company are authorized as investments by clause (m) or (n);

preferred  
shares

- (m) the preferred shares of a corporation if,
  - (i) the corporation has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
  - (ii) the common shares of the corporation are, at the date of investment, authorized as investments by clause (n);

common  
shares

- (n) the fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of investment has either,
  - (i) paid a dividend in each such year upon its common shares, or

- (ii) had earnings in each such year available for the payment of a dividend upon its common shares,

of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;

- (o) ground rents, mortgages, charges or hypothecs on real estate or leaseholds in Canada or in any country in which the insurer is carrying on business, but the amount paid for the mortgage, charge or hypothec together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or leasehold ranking equally with or prior to the mortgage, charge or hypothec in which the investment is made shall not exceed three-quarters of the value of the real estate or leasehold covered thereby;

- (p) mortgages, charges or hypothecs on real estate or leaseholds in Canada or in any country in which the insurer is carrying on business or bonds or notes secured by such mortgages, charges or hypothecs, notwithstanding that the mortgage, charge or hypothec exceeds the amount that the insurer is otherwise authorized to invest, if the excess is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed under this Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada);

real estate  
mortgages

guaranteed  
or insured  
real estate  
mortgages

R.S.C. 1970,  
cc. I-15, I-16

- (q) real estate or leaseholds for the production of income in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan corporation or trust company incorporated in Canada, if,

real estate  
for the  
production  
of income

- (i) a lease of the real estate or leasehold is made to, or guaranteed by,

- (A) the government, or an agency of the government, of the country in which

the real estate or leasehold is situated or of a province, state or municipality of that country, or

- (B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by clause (m) or (n),
- (ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment, and
- (iii) the total investment of an insurer in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the insurer,

and the insurer may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold;

other real  
estate  
for the  
production  
of income

- (r) real estate or leaseholds for the production of income in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan corporation or trust company incorporated in Canada, if,
- (i) the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment, and
- (ii) the total investment of an insurer in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the insurer,

and the company may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold;

- (s) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*. R.S.O. 1970, c. 224, s. 383 (1); 1980, c. 6, s. 3. credit union term deposits  
R.S.O. 1980, c. 102

(2) An insurer may lend its funds or any portion thereof on the security of, Lending funds

- (a) any bonds, debentures or other evidences of indebtedness, shares or other securities in which the insurer may invest its funds under subsection (1) but the amount of the loan, together with the amount invested therein, if any, shall not exceed in the aggregate the amount that might be invested therein under this Part; authorized securities

- (b) real estate or leaseholds for a term of years or other estate or interest in real estate in Canada or or in any country in which the insurer is carrying on business but the amount of the loan together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or interest therein ranking equally with or prior to the loan shall not exceed 75 per cent of the value of the real estate or interest therein, except that an insurer may accept as part payment for real estate sold by it a mortgage, charge or hypothec for more than 75 per cent of the sale price of the real estate; or real estate mortgages

- (c) real estate or leaseholds in Canada or in any country in which the insurer is carrying on business, notwithstanding that the loan exceeds the amount that the insurer is otherwise authorized to lend, if, to the extent of the excess, the mortgage, charge or hypothec thereon securing the loan is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed under this Act, the *Canadian and British Insurance Companies Act* (Canada) or the *Foreign Insurance Companies Act* (Canada). guaranteed or insured real estate mortgages  
R.S.C. 1970, cc. I-15, I-16

(3) Where an insurer owns securities of a corporation and as a result of a *bona fide* arrangement for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, such securities are to be exchanged for bonds, debentures or other evidences of Securities received on reorganization, liquidation or amalgamation

indebtedness or shares not authorized as investments by the foregoing provisions of this section, the insurer may accept such bonds, debentures or other evidences of indebtedness or shares and they shall be allowed as assets of the insurer in the annual report prepared by the Superintendent for the Minister, only for a period of five years after their acceptance, or such further period as the Lieutenant Governor in Council determines, unless it is shown to the satisfaction of the Lieutenant Governor in Council that such bonds, debentures or other evidences of indebtedness or shares are not inferior in status or value to the securities for which they have been substituted or unless they become eligible as investments under subsection (1).

Other  
assets

(4) An insurer who is a joint stock insurance company or a cash-mutual insurance corporation may make investments or loans not hereinbefore authorized by this section subject to the following provisions,

real estate  
for the  
production  
of income

(a) investments in real estate or leaseholds under this subsection shall be made only for the production of income, and may be made by the insurer in Canada or in any country in which the insurer is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada, and the insurer may hold, maintain, improve, develop, repair, lease, sell or otherwise deal with or dispose of such real estate or leaseholds, but the total investment of an insurer under this subsection in any one parcel of real estate or in any one leasehold shall not exceed 1 per cent of the book value of the total assets of the insurer;

exemption

(b) this subsection shall be deemed not to enlarge the authority conferred by subsections (1) and (2) to invest in mortgages, charges or hypothecs and to lend on the security of real estate or leaseholds; and

limitation

(c) the total book value of the investments and loans made under this subsection and held by the insurer excluding those that are or at any time since acquisition have been authorized as investments apart from this subsection, shall not exceed 7 per cent of the book value of the total assets of the insurer.

Life  
insurance  
policies

(5) An insurer licensed to transact the business of life insurance may invest or lend its life insurance funds or any portion thereof in the purchase of, or on the security of, policies of life insurance issued by the insurer or by any other insurance company licensed to transact the business of life insurance in Canada.

(6) Notwithstanding anything in this Act or in any other Act, an insurer may,

National  
Housing  
Acts

- (a) lend its funds or any portion thereof on the security of real estate pursuant to the *National Housing Act* (Canada), or any amendments thereto, or may make loans on the security of real estate or leaseholds or other estate or interest therein in excess of 75 per cent of the value of the real estate or interest therein that forms the security for such loan or in excess of the amount that may be loaned in accordance with that Act, or any amendments thereto, where the amount of the excess is guaranteed by the Lieutenant Governor in Council or by a municipality under the *Housing Development Act*;  
R.S.C. 1970,  
c. N-10
- (b) if it is licensed to transact the business of life insurance, cause to be formed, or may join with one or more insurance companies licensed to transact the business of life insurance in forming one or more institutional holding companies and one or more institutional housing corporations as defined in the *National Housing Act* (Canada), and may invest its funds in shares or debentures of such holding companies and in shares of such housing corporations to an aggregate amount that, when added to the aggregate amount invested by such insurer under clause (c), does not exceed 5 per cent of its total assets in Canada allowed by the Superintendent; and  
R.S.O. 1980,  
c. 209
- (c) if it is licensed to transact the business of life insurance, invest its funds to an aggregate amount not exceeding 5 per cent of its total assets in Canada allowed by the Superintendent in any other classes or types of investment pursuant to the *National Housing Act* (Canada), or any amendments thereto, including the purchase of land, the improvement thereof, construction of buildings thereon, and the management and disposal of such land and buildings.

(7) An insurer may make guaranteed loans under and in accordance with the provisions of the *Canada Student Loans Act* (Canada), the *Farm Improvement Loans Act* (Canada), the *Fisheries Improvement Loans Act* (Canada) or the *Small Businesses Loans Act* (Canada).  
Guaranteed  
loans under  
1964-65,  
c. 24 (Can.)  
R.S.C. 1970,  
cc. S-17, F-3,  
F-22, S-10

(8) Notwithstanding anything in subsection (1), an insurer licensed under the laws of Ontario to transact the business of life insurance may invest its funds in the fully paid shares of,  
Power to  
invest in  
shares of  
certain  
corporations

- (a) any corporation incorporated outside Canada to undertake contracts of life insurance;
- (b) any corporation incorporated to provide the insurer or a corporation mentioned in clause (a) with advisory, management or sales distribution services in respect of life insurance contracts or annuities the reserves for which vary in amount depending on the market value of a specified group of assets maintained in a separate and distinct fund;
- (c) any corporation incorporated under the laws of Canada or any province thereof to undertake contracts of insurance other than contracts of life insurance;
- (d) any corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds;
- (e) any corporation incorporated to offer public participation in an investment portfolio;
- (f) any corporation incorporated to provide a corporation mentioned in clause (e) with advisory, management or sales distribution services; or
- (g) with the prior approval of the Minister, any corporation incorporated to carry on any other business reasonably ancillary to the business of insurance,

subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council.

Additional  
security may  
be taken

(9) An insurer may take any additional securities of any nature to further secure repayment to it of any loan or investment or to further secure the sufficiency of any of the securities in or upon which it is by this section authorized to invest or lend any of its funds.

By-laws to  
prevail

(10) Where the constitution, by-laws or rules of an insurer prescribe the securities in which its funds may be invested, nothing in this section enlarges the power of investment.

Disposal of  
unauthorized  
investments

(11) The Superintendent may direct an insurer to dispose of and realize any of its investments acquired after the 1st day of May, 1928, and not authorized by this Part, and such insurer shall within sixty days after receiving such direction absolutely dispose of and realize such investments, and, if the amount realized therefrom falls below the amount

paid by such insurer for such investments, the directors of the insurer are jointly and severally liable for the payment to such insurer of the amount of the deficiency, but if any director present at the meeting at which such investment is authorized, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such investment and is able to do so, delivers or sends to the insurer by registered mail his protest against such investment, and, within eight days thereafter, sends a copy thereof by registered mail to the Superintendent, such director thereby and not otherwise exonerates himself from such liability. R.S.O. 1970, c. 224, s. 383 (2-11).

**389.** An insurer who is not a joint stock insurance company, a fraternal society, a mutual insurance corporation licensed to write life insurance or a cash-mutual insurance corporation, may invest its funds in securities described in clauses 388 (1) (a) to (l) and (o) and (p) and may lend its funds on the security of any such securities. R.S.O. 1970, c. 224, s. 384; 1971, c. 84, s. 24.

**390.** The following restrictions, limitations and prohibitions apply to insurers in the exercise of the investment powers under sections 388 and 389,

(a) an insurer not licensed to transact the business of life insurance shall not invest in or lend its funds upon the security of its own shares or the shares of any corporation transacting the business of insurance;

(b) an insurer licensed to transact the business of life insurance shall not,

(i) invest in the shares of a corporation incorporated in Canada to undertake contracts of life insurance,

(ii) lend its funds upon the security of its own shares, or

(iii) except as provided in section 211 of the *Corporations Act*, invest in or purchase its own shares;

(c) except as to securities issued or guaranteed by the Government of Canada or the government of a province of Canada or a municipal corporation in Canada, an insurer shall not invest in any one security or make a total investment in any one corporation, either by the purchase of shares or other securities

of such corporation or by lending to it on the security of its debentures or other assets or any part thereof, of more than 10 per cent of the book value of the total assets of the insurer;

- (d) except as to investments made under subsection 388 (8) and as to securities guaranteed by the Government of Canada or the government of a province of Canada or by a municipal corporation in Canada, an insurer shall not make any investment the effect of which will be that it will hold more than 30 per cent of the common shares or 30 per cent of the total issued shares of any one corporation;
- (e) the total book value of the investments of an insurer in common shares, other than its own common shares purchased under section 211 of the *Corporations Act*, shall not exceed 25 per cent of the book value of the total assets of the insurer;
- (f) the total book value of the investments of an insurer in real estate or leaseholds for the production of income under clauses 388 (1) (q) and (r) and subsection 388 (4) shall not exceed 10 per cent of the book value of the total assets of the insurer;
- (g) an insurer shall not invest any of its funds in bonds, debentures or other evidences of indebtedness on which the payment of principal or interest is in default; and
- (h) an insurer shall not act as an underwriter in connection with the purchase or sale of any securities or other property of any kind. R.S.O. 1970, c. 224, s. 385.

R.S.O. 1980,  
c. 95

Prohibited  
loans and  
investments

**391.**—(1) An insurer shall not knowingly make an investment, after the 13th day of November, 1970, other than a loan on the security of a policy of life insurance issued by it,

- (a) by way of a loan to,
  - (i) a director or officer of the insurer, or a spouse or child of such director or officer, or
  - (ii) an individual, his spouse or any of his children under twenty-one years of age if either the individual or a group consisting of the individual, his spouse and such children is a substantial shareholder of the insurer;

(b) in a corporation that is a substantial shareholder of the insurer; or

(c) in a corporation in which,

(i) an individual mentioned in subclause (a) (i),

(ii) an individual who is a substantial shareholder of the insurer,

(iii) another corporation that is a substantial shareholder of the insurer, or

(iv) a group consisting exclusively of individuals mentioned in subclause (a) (i),

has a significant interest. R.S.O. 1970, c. 224, s. 386 (1); 1971, c. 84, s. 25.

(2) An insurer shall not knowingly retain an investment <sup>Disposition</sup> mentioned in subsection (1).

(3) For the purpose of this section,

Interpre-  
tation

(a) a person has a significant interest in a corporation, <sup>"significant interest"</sup> or a group of persons has a significant interest in a corporation if,

(i) in the case of a person, he owns beneficially, either directly or indirectly, more than 10 per cent, or

(ii) in the case of a group or persons, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the shares of the corporation for the time being outstanding;

(b) a person is a substantial shareholder of a corpora- <sup>"substantial shareholder"</sup> tion or a group of persons is a substantial shareholder of a corporation if that person or group of persons owns beneficially, either individually or together and either directly or indirectly, equity shares to which are attached more than 10 per cent of the voting rights attached to all of the equity shares of the corporation for the time being outstanding; and in computing the percentage of voting rights

attached to equity shares owned by an underwriter, there shall be excluded the voting rights attached to equity shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;

"equity share"

- (c) "equity share" means a share of any class to which are attached voting rights exercisable under all circumstances and a share of any class to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

"investment"

- (d) "investment" means,

- (i) an investment in a corporation by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or

- (ii) a loan to a person or persons,

but does not include any normal working balance between an insurer and any other corporation transacting the business of insurance or any advance or loan that is merely ancillary to the main business of the insurer; and

"officer"

- (e) notwithstanding paragraph 45 of section 1, "officer" means only the president, a vice-president, the secretary, the treasurer, the manager, the controller and the actuary of an insurer and any other person designated as an officer of the insurer by by-law or by resolution of the directors thereof.

"Down-stream" investment

- (4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or is deemed by this subsection to own beneficially, shares of a corporation, that person or group of persons shall be deemed to own beneficially that proportion of the shares of any other corporation that is owned beneficially, directly or indirectly, by the first-mentioned corporation, that is equal to the proportion of the shares of the first-mentioned corporation that is owned beneficially, directly or indirectly, or is deemed by this subsection to be owned beneficially, by that person or group of persons.

Exception

- (5) Notwithstanding subsection (4), an insurer is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially

equity shares of the insurer is, by reason of that subsection, deemed to own beneficially equity shares of such corporation.

(6) Where any person or group of persons is a substantial shareholder of an insurer and, as a consequence thereof and of the application of this section, certain investments are prohibited for the insurer, the Minister may, on the advice of the Superintendent, and on application by the insurer, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied, Exemption

(a) that the decision of the insurer to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group, and does not involve in any significant way the interests of that person or group apart from their interests as a shareholder of the insurer; and

(b) that the investment is to be made under the power granted to the insurer under this Part.

(7) Any order of exemption made by the Minister under subsection (6) may contain any conditions or limitations considered by the Minister to be appropriate and may be revoked by the Minister at any time. Idem R.S.O. 1970, c. 224, s. 386 (2-7).

**392.**—(1) All investments and deposits of the funds of an insurer shall be made in its corporate name. Investments  
in corporate  
name

(2) Every insurer shall at all times retain in Canada and under its own control assets of a value at least equal to its total liabilities to its policyholders in Canada. Assets in  
Canada

(3) Where the laws of any province, state or country in which any insurer transacts or is about to transact business require that the deposits made or to be made by such insurer in such province, state or country shall be made in the name of or transferred or assigned to any person or corporation other than the insurer, this section does not prohibit such insurer from making in the name of, or transferring or assigning to, such other person or corporation the investments and deposits necessary to comply with the said laws. Deposits  
outside  
Canada

(4) No director or officer of an insurer and no member of a committee having any authority in the investment or disposition of its funds shall accept or be the beneficiary of, either directly or indirectly, any fee, brokerage, commission, gift or other consideration for or on account of any loan, Prohibition  
on directors  
or officers  
receiving  
fees or gifts

deposit, purchase, sale, payment or exchange made by or on behalf of such insurer, or be pecuniarily interested in any such purchase, sale or loan, either as borrower, principal, co-principal, agent or beneficiary, except that, if he is a policyholder, he is entitled to all the benefits accruing under the terms of his contract.

Securities  
to be held  
in Ontario

(5) Except as in this section provided, all the securities of an insurer incorporated and licensed under the laws of Ontario shall be held at the head office of the insurer or elsewhere in Ontario and the holding of securities, wherever situated, is subject to such regulations respecting their safe-keeping, including registration and the bonding of directors, officers and employees of the insurer, as the Lieutenant Governor in Council may prescribe. R.S.O. 1970, c. 224, s. 387.

## PART XVIII

### UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN THE BUSINESS OF INSURANCE

Interpre-  
tation

**393.** For the purposes of this Part,

- (a) "person" means a person engaged in the business of insurance and includes any individual, corporation, association, partnership, reciprocal or inter-insurance exchange, member of the society known as Lloyds, fraternal society, mutual benefit society, agent, broker or adjuster;
- (b) "unfair or deceptive acts or practices in the business of insurance" includes,
  - (i) the commission of any act prohibited under this Act or the regulations,
  - (ii) any unfair discrimination between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged by it for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable thereon or in the terms and conditions thereof,
  - (iii) any unfair discrimination in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification,

- (iv) any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, the terms, benefits or advantages of any policy or contract of insurance issued or to be issued,
- (v) any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued,
- (vi) any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract,
- (vii) any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure,
- (viii) any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance upon which a sales commission is payable to such person, or
- (ix) any consistent practice or conduct that results in unreasonable delay or resistance to the fair adjustment and settlement of claims. R.S.O. 1970, c. 224, s. 388.

**394.** No person shall engage in any unfair or deceptive <sup>Prohibition</sup> act or practice in the business of insurance. R.S.O. 1970, c. 224, s. 389.

**395.** The Superintendent may examine and investigate <sup>Superintendent may</sup> the affairs of every person engaged in the business of <sup>investigate</sup> insurance in Ontario in order to determine whether such person has been, or is, engaged in any unfair or deceptive act or practice. R.S.O. 1970, c. 224, s. 390.

**396.**—(1) Where it appears to the Superintendent that <sup>Order of Superintendent</sup> any person is engaging in any unfair or deceptive act or practice in the business of insurance, the Superintendent may order that such person cease engaging in his business or any part thereof named in the order, and an order under this subsection may be made subject to such terms and conditions as the Superintendent may specify in the order and the order may be revoked when the Superintendent is satisfied that the unfair and deceptive acts or practices are corrected and not likely to recur.

## Hearing

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the Superintendent the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof or such longer time as is consented to by the person entitled to the hearing.

Service and  
effect of  
order

(3) A notice of every order made under this Part shall be served upon every person named therein and upon such other persons as the Superintendent considers appropriate and thereupon no person shall engage in that part of the business of insurance that is the subject of the order. R.S.O. 1970, c. 224, s. 391.

## Penalty

**397.** Any person who contravenes an order of the Superintendent made under this Part is, in addition to any other consequence or remedy provided by law, guilty of an offence punishable in the same manner as if the person were undertaking insurance or carrying on business in Ontario without holding a licence to do so. R.S.O. 1970, c. 224, s. 392.

## PART XIX

## AMENDMENTS

s. 1, par. 5,  
re-enacted

**398.**—(1) Paragraph 5 of section 1 is repealed and the following substituted therefor:

5. “agent” means a person who, for compensation, commission or any other thing of value,

(a) solicits insurance on behalf of an insurer who has appointed him to act as the agent of such insurer or on behalf of the Facility Association under the *Compulsory Automobile Insurance Act*; or

R.S.O. 1980,  
c. 83

(b) solicits insurance on behalf of an insurer or transmits, for a person other than himself, an application for, or a policy of insurance to or from such insurer, or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal with such insurer,

and who is not a member of the Registered Insurance Brokers of Ontario nor a person acting under the authority of subsection 346 (15), (16) or (17).

s. 1, par. 11,  
re-enacted

(2) Paragraph 11 of the said section 1 is repealed and the following substituted therefor:

11. "broker" means an insurance broker within the meaning of the *Registered Insurance Brokers Act*.

R.S.O. 1980,  
c. 444

**399.**—(1) Subsection 346 (12) is repealed and the following substituted therefor:

s. 346 (12),  
re-enacted

(12) No agent for insurance, other than an agent who holds a licence within the class of licence referred to in clause (2) (a), shall be licensed to act as agent for more than one insurer transacting insurance and the name of such insurer shall be specified in the licence and no such agent shall represent himself to the public by advertisement or otherwise as the agent of more than one such insurer.

Authority  
of agent

(12a) Notwithstanding subsection (12), an agent may be licensed to act as agent for an affiliated group of insurers that, in the opinion of the Superintendent, are carrying on business as a common undertaking and such affiliated group of insurers shall be deemed to be an insurer for the purpose of determining the agent's authority to act as an agent under this Act.

Insurance  
groups

(2) Subsection 346 (18) is repealed and the following substituted therefor:

s. 346 (18),  
re-enacted

(18) Unless the Superintendent otherwise directs, an officer or salaried employee of the head office of an insurer who does not receive commission may, without a licence, solicit contracts of life insurance, accident insurance and sickness insurance on behalf of the insurer but an officer or employee whose application for a licence as an insurance agent or salesman has been refused or whose licence has been revoked or suspended may not so act without the written approval of the Superintendent.

Salaried  
officials,  
etc., acting  
without  
licence

**400.** Sections 347, 348, 349 and 350 are repealed.

ss. 347-50,  
repealed

**401.** Subsection 356 (1) is amended by striking out "brokers" in the first line.

s. 356 (1),  
amended

**402.**—(1) Subsection 357 (1) is amended by striking out "brokers" in the first line and "broker" in the third line.

s. 357 (1),  
amended

(2) Subsection 357 (2) is amended by striking out "or brokers" in the first line and by striking out "or broker" in the fourth line.

s. 357 (2),  
amended

(3) Subsection 357 (3) is amended by striking out "broker" in the second line.

s. 357 (3),  
amended

(4) Subsection 357 (5) is amended by striking out "broker" in the first line and in the eighth line.

s. 357 (5),  
amended

s. 357 (6),  
amended

(5) Subsection 357 (6) is amended by striking out "brokers" in the fourth line.

s. 357 (9),  
amended

(6) Subsection 357 (9) is amended by striking out "or broker" in the third line.

s. 358,  
amended

**403.** Section 358 is amended by striking out "broker" in the second line, the third line and the sixth line.

s. 360 (1),  
re-enacted

**404.** Subsection 360 (1) is repealed and the following substituted therefor:

No compensa-  
tion to be  
paid by  
insurer not  
licensed

(1) No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not an agent or broker or a person acting under subsection 346 (15) and whoever contravenes this subsection is guilty of an offence.

s. 363,  
amended

**405.** Section 363 is amended by striking out "a broker or adjuster" in the second line and inserting in lieu thereof "an adjuster".

Commence-  
ment of  
Part

**406.** This Part does not come into force until a day to be named by proclamation of the Lieutenant Governor.

## SCHEDULE A

(Section 131)

### PREMIUM NOTE

(Place)

(Date)

In consideration of insurance granted under Policy No.....

I hereby promise to pay the.....Company

at.....(*place of payment*) the sum of.....dollars, as follows:

on....day of....., 19...., in full of cash payment.....dollars

—or—

on....day of....., 19...., 1st instalment of cash payment.....dollars;

on....day of....., 19...., 2nd instalment of cash payment.....dollars;

on....day of....., 19...., 3rd instalment of cash payment.....dollars;

—and—

upon notice such further sums not exceeding, in the aggregate, the face amount of this note as may be lawfully assessed hereon by the directors of the said Company under the *Insurance Act*.

**An action that may be brought or commenced in a small claims court in respect or on account of this note, or any sum to be assessed thereon, may be brought and commenced against the maker hereof in the small claims court for the division in which the head office or an agency of the insurer is located.**

§.....

.....  
Signature of Insured

.....  
Post Office Address

R.S.O. 1970, c. 224, Sched. B.

SCHEDULE B

(Section 85)

MINIMUM STANDARDS OF VALUATION OF  
LIFE INSURANCE CONTRACTS

1. As respects benefits depending upon life contingencies only in or arising out of policies of life insurance, other than industrial policies and excluding life annuity settlements, the bases of valuation for any particular class or group of policies shall be an assumed rate of interest not exceeding 3½ per cent per annum and one of the tables of mortality specified below, or any other table that is approved by the Superintendent.

*Tables of Mortality*

- (i) American Experience Table, Am. Exp.
- (ii) Institute of Actuaries of Great Britain, H<sup>m</sup>
- (iii) British Offices Life Tables, 1893, O<sup>m</sup>(5)
- (iv) Canadian Men Table, C<sup>m</sup>(5)
- (v) American Men Table, A<sup>m</sup>(5)
- (vi) Mortality of Assured Lives, A 1924-29
- (vii) Commissioners 1941 Standard Ordinary Mortality Table, 1941 CSO
- (viii) Commissioners 1958 Standard Ordinary Mortality Table, 1958 CSO

The value of the policy as of any date after issue shall be the difference between the then value of the sum assured thereunder (including the then value of any bonus or addition thereto, or reduction in future premiums, made after the date of issue of the policy and subsisting as at the date of valuation), and the then value of the valuation premiums (as hereinafter defined) assumed to be payable on each anniversary of the policy following the date of valuation during the term for which premiums are required to be paid in accordance with the terms of the policy to be valued.

If the net level premium for the life insurance risks incurred by the company in issuing the policy does not exceed the whole life net level premium for a like amount of whole life insurance, the valuation premium shall be the net level premium for a like policy as of an age one year greater than the age at entry assumed to be payable at the beginning of the second and each subsequent policy year for which premiums are payable under the terms of the policy to be valued.

If the net level premium for the life insurance risks incurred by the company in issuing the policy exceeds the net level premium payable throughout life for a like amount of whole life insurance, the valuation premium shall be obtained by adding to each net level annual premium, excluding the first, such an amount, assumed to be payable at the beginning of the second and each subsequent policy year for which premiums are payable under the terms of the policy to be valued, as is equal in value as of the date of issue of the policy to the difference between the net level premiums payable throughout life for a whole life policy and the one-year term premium for, in each case, a policy of like amount and of the same age at entry as the policy to be valued.

2. As respects benefits depending upon life contingencies only in or arising out of industrial life insurance policies, excluding life annuity settlements, the basis of valuation for any particular class or group of policies shall be an assumed rate of interest not exceeding  $3\frac{1}{2}$  per cent per annum and one of the tables of mortality specified below, or any other table that is approved by the Superintendent.

*Tables of Mortality*

- (i) Any of the tables named under paragraph 1 above.
- (ii) The Standard Industrial Table.
- (iii) 1941 Standard Industrial Mortality Table, 1941 SI.

No reserve shall be held at any valuation within the first year after issue of any policy. In valuations thereafter the insurance risks of the first policy year shall be ignored, and, for valuation purposes, the date of issue of the policy shall be assumed to be one year after the actual date of issue, the age at issue shall be assumed to be one year greater than the actual age at issue, and the premium terms shall be assumed to commence as of the assumed date of issue and to be co-terminous with the premium term stated in the policy to be valued.

The valuation premium shall be such a level premium as of the assumed age at issue, payable for the assumed premium term, as is equal in the then present value to the insurance risks incurred by the Company as from the attainment of the assumed age at issue.

In valuations made as of any date after the attainment of the assumed age at issue, the value of the policy shall be the difference between the then value of the sums assured (including the then value of any bonus or addition

thereto, or reduction in future premiums, made after the date of issue of the policy and subsisting as of the date of valuation) and the then value of the valuation premium assumed to be payable following the date of valuation during the term for which premiums are required to be paid in accordance with the terms of the policy.

If the terms of any particular class or group of policies are such that the above method of valuation appears to be inapplicable or inappropriate, adaptations in the above method may be made, subject to the approval of the Superintendent.

3. As respects immediate or deferred life annuities, including life annuity settlements (other than disability annuities) arising out of policies of life insurance, the bases of valuation shall be an assumed rate of interest not exceeding 4 per cent per annum and one of the tables of mortality specified below, male or female, according to the sex of the nominee, or any other table of mortality that is approved by the Superintendent.

*Tables of Mortality*

- (i) Mortality of Annuitants, 1900-1920, a(f) and a(m).
- (ii) 1937 Standard Annuity Table.
- (iii) The a-1949 Table (Annuity Table for 1949).
- (iv) The a(55) Tables for Annuitants.

In the valuation of deferred annuities, the method of valuation shall be the net level premium method, subject to such adaptations as the Superintendent considers appropriate in any case where the premium may not be uniform throughout the premium-paying period.

4. As respects future payments dependent on a term certain only, including term-certain annuities arising out of policies of life insurance, the valuation shall be made at a rate of interest not exceeding 4 per cent per annum, and the method of valuation shall be the net level premium method, subject to such adaptations as the Superintendent considers appropriate in any case where the premium for the policy may not be uniform throughout the premium-paying period.

5. Policies other than those at uniform annual premiums for a uniform amount of insurance throughout shall be valued on bases determined in accordance with the foregoing provisions with such adaptations in the valuation methods as seem to the Superintendent appropriate in the circumstances.

6. Where a policy of life insurance provides for accident or sickness insurance benefits, the Superintendent may prescribe the basis for valuing such benefits.

## SCHEDULE C

MANDATORY MEDICAL AND REHABILITATION  
BENEFITS, AND ACCIDENT BENEFITS IN  
MOTOR VEHICLE LIABILITY POLICIES

## ACCIDENT BENEFITS SECTION

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

SUBSECTION 1—MEDICAL, REHABILITATION AND  
FUNERAL EXPENSES

1. All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, hospital, professional nursing and ambulance service and for any other service within the meaning of insured services under the *Health Insurance Act* and for such other services and supplies which are, in the opinion of the physician of the insured person's choice and that of the Insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.

2. Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

*The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.*

## SUBSECTION 2—DEATH BENEFITS AND LOSS OF INCOME PAYMENTS

## Part I—Death Benefits

A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, a payment—based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive—of the following amounts:

Head of the Household	\$10,000
Spouse of the Head of the Household	10,000
Dependant within the meaning of sub-paragraph <i>b</i> of subparagraph 3 of paragraph B	2,000

In addition, with respect to death of the head of the household, where there are two or more survivors—spouse or dependants—the principal sum payable is increased \$1,000 for each survivor other than the first.

B. For the purposes of this Part,

- (1) "Spouse of the head of the household" means the spouse with the lesser income from employment in the twelve months preceding the date of the accident.

(2) "Spouse" means either of a man and woman who,

- (a) are married to each other;
- (b) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
- (c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

and includes,

- (d) either of a man and woman not being married to each other who have cohabited,
    - (i) continuously for a period of not less than five years, or
    - (ii) in a relationship of some permanence where there is a child born of whom they are the natural parents,
- and have so cohabited within the preceding year.

(3) "Dependant" means,

- (a) the spouse of the head of the household who resides with the head of the household;
- (b) a person,
  - (i) under the age of 18 years who resides with and is principally dependent upon the head of the household or the spouse of the head of the household for financial support,
  - (ii) 18 years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse of the head of the household for financial support, or
  - (iii) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse of the head of the household for financial support; or
- (c) a parent or relative,
  - (i) of the head of the household, or
  - (ii) of the spouse of the head of the household,residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

- (4) The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.
- (5) The total amount payable with respect to death where no head of the household or spouse survives the deceased by at least 30 days shall be divided equally among the surviving dependants.

- (6) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependant survives the deceased by at least 30 days.

#### Part II—Loss of Income

Subject to the provisions of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

- (a) such person was employed at the date of the accident;
- (b) within 30 days from the date of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment;
- (c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

*Amount of Weekly Payment*—The amount of a weekly payment shall be the lesser of,

- (a) \$140 per week; or
- (b) 80 per cent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
  - (i) the laws of any jurisdiction,
  - (ii) wage or salary continuation plans available to the person by reason of his employment, and
  - (iii) Part III of this subsection (2),

but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment or for the first two weeks of such substantial inability.

For the purpose of this Part,

- (1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;
- (2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$70 per week for not more than 12 weeks;

- (3) a person shall be deemed to be employed,
  - (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
  - (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;
- (4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;
- (5) except for the first two weeks of disability where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

Part III—Supplemental Benefits respecting Accidents occurring in Quebec

A. For the purposes of this Part,

- (a) “accident” means an event occurring in Quebec resulting in damage caused by an automobile, or by the use of an automobile, or by the load of an automobile, including damage caused by a trailer;
- (b) “bodily injury” means physical, psychological or mental injury including death as well as damage to the clothing worn by the victim at the time of the accident;
- (c) “resident of Ontario” means any person,
  - (i) who is authorized by law to be or to remain in Canada and is living and ordinarily present in Ontario, and
  - (ii) who meets the criteria prescribed in Division II of O.C. 374-78 made under the *Automobile Insurance Act* (Quebec), which apply with necessary modifications,but does not include a person,
  - (iii) who is merely touring, passing through or visiting Ontario, or
  - (iv) who is, at the time of an accident in Quebec, the owner or driver of, or a passenger in, an automobile registered in Quebec;
- (d) “person insured in Quebec” means a resident of Ontario who is,
  - (i) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,
  - (ii) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile,

- (iii) any person, not the occupant of an automobile, who is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,
- (iv) the named insured, if an individual, and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile who is struck by any other automobile,
- (v) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile,
- (vi) any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile who is struck by any other automobile, and
- (vii) any other person who is,
  - a. the occupant of an automobile, or
  - b. not being the occupant of an automobile, is struck by an automobile,

driven by a person insured in Quebec as defined in sub-subparagraphs (i) to (vi) of this subparagraph.

B. With respect to bodily injury, as a result of an accident, to a person insured in Quebec the insurer agrees to make payments under this Part in the same amount and form and subject to the same conditions as if such person were a resident of Quebec as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act and entitled to payments under that Act and those regulations.

#### SUBSECTION 3—SPECIAL PROVISIONS, DEFINITIONS, AND EXCLUSIONS OF THIS SECTION

##### (1) *"Insured person" defined*

In this Section, the words "insured person" mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
  - (i) the insured is an individual or are husband and wife;
  - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;

- (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
  - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
  - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections (1) and (2) of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections (1) and (2) of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
  - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
  - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections (1) and (2) of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
- in respect of (e) and (f) above,
- (i) neither such employee nor partner or his or her spouse is the owner of an automobile of the private passenger or station wagon type;

- (ii) the described automobile is of the private passenger or station wagon type;
- (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
- (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
- (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;

in respect of (c) above only,

- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) *Exclusions*

- (a) Except as provided in Part III of subsection (2), the Insurer shall not be liable under this section for bodily injury to or death of any person,
  - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
  - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
  - (iii) caused directly or indirectly by radioactive material;
- (b) The Insurer shall not be liable under subsection (1) or Part II of subsection (2) of this section for bodily injury or death,
  - (i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or
  - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) *Notice and proof of claim*

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably

possible in the circumstances of the happening of the accident and the loss occasioned thereby;

- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) *Medical reports*

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) *"Physician" defined*

"Physician" means a legally qualified medical practitioner.

(6) *Release*

Notwithstanding any release provided for under the relevant sections of the *Insurance Act* the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

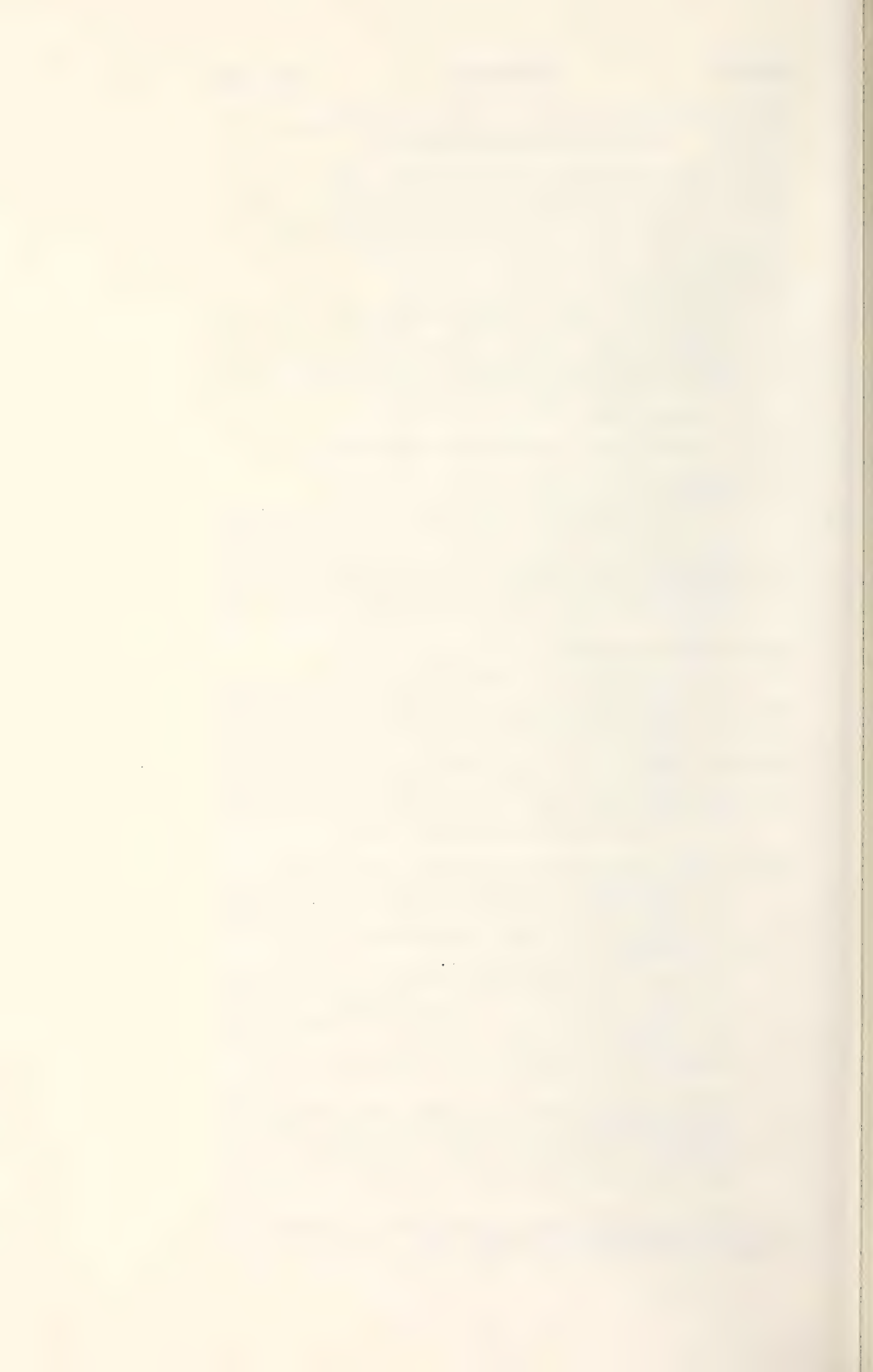
(7) *When moneys payable*

- (a) All amounts payable under this section, other than benefits under Part II of subsection (2), shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection (2) shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this Section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

(8) *Limitation on benefit payable*

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection (1) or (2), he or his personal representative or any person claiming through or under him or by virtue of Part V of the *Family Law Reform Act*, may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply. 1971, c. 84, s. 26; 1972, c. 66, s. 18; O. Reg. 161/78; O. Reg. 416/78; O. Reg. 1004/78.



## CHAPTER 219

## Interpretation Act

**1.**—(1) The provisions of this Act apply to every Act of the Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision,

Application  
of Act

(a) is inconsistent with the intent or object of the Act;  
or

(b) would give to a word, expression or provision of the Act an interpretation inconsistent with the context; or

(c) is in the Act declared not applicable thereto.

(2) Sections 2, 4, 9, 27 and 30 apply to the regulations made under the authority of an Act. R.S.O. 1970, c. 225, s. 1.

Application  
of certain  
sections to  
regulations

**2.** Where an Act contains an interpretation provision, it shall be read and construed as subject to the exceptions contained in subsection 1 (1). R.S.O. 1970, c. 225, s. 2.

Interpre-  
tation  
provisions in  
other Acts

**3.** The provisions of this Act apply to the construction of it and to the words and expressions used in it. R.S.O. 1970, c. 225, s. 3.

Application  
to this Act

## RULES OF CONSTRUCTION

**4.** The law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning. R.S.O. 1970, c. 225, s. 4.

Law always  
speaking

**5.** Where an Act is not to come into operation immediately on the passing thereof and confers power to make an appointment, to make, grant or issue an order, warrant, scheme, letters patent, rules, regulations or by-laws, to give notices, to prescribe forms, or to do any thing for the purposes of the Act, that power may be exercised at any time after the passing of the Act, but an instrument made under the power, unless the contrary is necessary for bringing the Act into operation, does not come into operation until the Act comes into operation. R.S.O. 1970, c. 225, s. 5.

What may  
be done  
under an  
Act before  
it is in  
operation

Meaning of expressions used in instruments issued under an Act

**6.** Where an Act confers power to make, grant or issue an order, warrant, scheme, letters patent, rule, regulation or by-law, expressions used therein, unless the contrary intention appears, have the same meaning as in the Act conferring the power. R.S.O. 1970, c. 225, s. 6.

Judicial notice

**7.—(1)** Every Act shall be judicially noticed by judges, justices of the peace and others without being specially pleaded.

Idem

**(2)** Every proclamation shall be judicially noticed by judges, justices of the peace and others without being specially pleaded. R.S.O. 1970, c. 225, s. 7.

Effect of preamble

**8.** The preamble of an Act shall be deemed a part thereof and is intended to assist in explaining the purport and object of the Act. R.S.O. 1970, c. 225, s. 8.

Marginal notes, headings, etc., not part of Act

**9.** The marginal notes and headings in the body of an Act and references to former enactments form no part of the Act but shall be deemed to be inserted for convenience of reference only. R.S.O. 1970, c. 225, s. 9.

All Acts remedial

**10.** Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. R.S.O. 1970, c. 225, s. 10.

The Crown

**11.** No Act affects the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty is bound thereby. R.S.O. 1970, c. 225, s. 11.

Private Acts

**12.** No Act of the nature of a private Act affects the rights of any person, or body corporate, politic or collegiate, such only excepted as are therein mentioned or referred to. R.S.O. 1970, c. 225, s. 12.

#### REPEAL, AMENDMENT AND CONSOLIDATION

Reservation of power to repeal or amend

**13.** Every Act shall be construed as reserving to the Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever the repeal, amendment, revocation, restriction or modification is considered by the Legislature to be required for the public good. R.S.O. 1970, c. 225, s. 13.

**14.**—(1) Where an Act is repealed or where a regulation <sup>Repeal, effect</sup> is revoked, the repeal or revocation does not, except as in this Act otherwise provided,

- (a) revive any Act, regulation or thing not in force or existing at the time at which the repeal or revocation takes effect;
- (b) affect the previous operation of any Act, regulation or thing so repealed or revoked;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, regulation or thing so repealed or revoked;
- (d) affect any offence committed against any Act, regulation or thing so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof;
- (e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act, regulation or thing had not been so repealed or revoked.

(2) If other provisions are substituted for those so repealed <sup>When other provisions substituted</sup> or revoked,

- (a) all officers and persons acting under the Act, regulation or thing so repealed or revoked, shall continue to act as if appointed under the provisions so substituted until others are appointed in their stead;
- (b) all proceedings taken under the Act, regulation or thing so repealed or revoked, shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;
- (c) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, regulation or thing so repealed or revoked, or in any other proceeding in relation to matters that have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adopted; and

- (d) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act, regulation or thing whereby such other provisions are substituted, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly. R.S.O. 1970, c. 225, s. 14.

Re-enactment,  
amendment,  
consolidation  
and revision

**15.** Where an Act is repealed and other provisions are substituted by way of re-enactment, amendment, revision or consolidation,

- (a) all regulations, orders, rules and by-laws made under the repealed Act continue good and valid in so far as they are not inconsistent with the substituted Act until they are annulled and others made in their stead; and
- (b) a reference in an unrepealed Act, or in a rule, order or regulation made thereunder to such repealed Act, shall, as regards any subsequent transaction, matter or thing be held and construed to be a reference to the provisions of the substituted Act relating to the same subject-matter and, if there is no provision in the substituted Act relating to the same subject-matter, the repealed Act stands good and shall be read and construed as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder. R.S.O. 1970, c. 225, s. 15.

Repeal of  
Act not a  
declaration  
that Act was  
in force

**16.** The repeal of an Act shall be deemed not to be or to involve a declaration that the Act was or was considered by the Legislature to have been previously in force. R.S.O. 1970, c. 225, s. 16.

Repeal or  
amendment  
not a  
declaration  
of previous  
law

**17.** The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law. R.S.O. 1970, c. 225, s. 17.

Amendment  
of Act not a  
declaration  
of different  
state of law

**18.** The amendment of an Act shall be deemed not to be or to involve a declaration that the law under the Act was or was considered by the Legislature to have been different from the law as it has become under the Act as so amended. R.S.O. 1970, c. 225, s. 18.

Re-enactment, etc.,  
not an  
adoption of  
judicial  
construction

**19.** The Legislature shall not, by re-enacting, revising, consolidating or amending an Act, be deemed to have adopted the construction that has by judicial decision or otherwise been placed upon the language used in the Act or upon similar language. R.S.O. 1970, c. 225, s. 19.

PROCLAMATIONS

**20.** Where the Lieutenant Governor is authorized to do any act by proclamation, the proclamation is to be understood to be a proclamation issued under an order of the Lieutenant Governor in Council, but it is not necessary for the proclamation to mention that it is issued under such an order. R.S.O. 1970, c. 225, s. 20.

Lieutenant Governor acting by proclamation

CROWN APPOINTMENTS

**21.** Authority to the Lieutenant Governor to make an appointment to an office, by commission or otherwise, shall be deemed authority to appoint during pleasure. R.S.O. 1970, c. 225, s. 21.

Tenure of office

REGULATIONS

**22.** The Lieutenant Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature and, where there is no provision in the Act, may prescribe forms and may fix fees to be charged by all officers and persons by whom anything is required to be done. R.S.O. 1970, c. 225, s. 22.

Regulations

IMPRISONMENT

**23.** If in an Act a person is directed to be imprisoned or committed to prison, the imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the correctional institution of the locality in which the order for the imprisonment is made or, if there be no correctional institution there, then in or to the correctional institution that is nearest to such locality. R.S.O. 1970, c. 225, s. 23.

Imprisonment, place

**24.** Where power to impose imprisonment is conferred by an Act, it shall be deemed to authorize the imposing of imprisonment with hard labour. R.S.O. 1970, c. 225, s. 24.

Hard labour

OFFENCE UNDER MORE THAN ONE PROVISION

**25.** Where an act or omission constitutes an offence under two or more Acts, the offender, unless the contrary intention appears, is liable to be prosecuted and punished under either or any of those Acts, but is not liable to be punished twice for the same act or omission. R.S.O. 1970, c. 225, s. 25.

Offence under more than one provision

CORPORATIONS

**26.** In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate,

Effect of words constituting a corporation

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal, to alter or change the seal at its pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purpose for which the corporation is constituted, and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt individual members of the corporation from personal liability for its debts, obligations or acts if they do not contravene the provisions of the Act incorporating them. R.S.O. 1970, c. 225, s. 26.

## IMPLIED PROVISIONS

Implied provisions,

as to jurisdiction

**27.** In every Act, unless the contrary intention appears,

- (a) where anything is directed to be done by or before a provincial judge or a justice of the peace or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where it is to be done;

implied powers

- (b) where power is given to a person, officer or functionary to do or to enforce the doing of an act or thing, all such powers shall be understood to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing;

acts to be done by more than two

- (c) where an act or thing is required to be done by more than two persons, a majority of them may do it;

deviation from forms

- (d) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not vitiate it;

powers and duties to be exercised and performed from time to time

- (e) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed from time to time as occasion requires;

to be exercised and performed by holder of office for time being

- (f) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the holder of the office for the time being;

- (g) where power is conferred to make by-laws, regulations, rules or orders, it includes power to alter or revoke the same from time to time and make others; power to make by-laws, etc., to confer power to alter
  
- (h) where the time limited by an Act for a proceeding or for the doing of any thing under its provisions expires or falls upon a holiday, the time so limited extends to and the thing may be done on the day next following that is not a holiday; computation of time where time limited expires on a holiday
  
- (i) where the time limited for a proceeding or for the doing of any thing in an office of the Supreme Court, or a county or district court office, or a surrogate court office, or a small claims court office, or a land registry office, or a sheriff's office expires or falls upon a day that is prescribed as a holiday for such office, the time so limited extends to and the thing may be done on the day next following that is not a holiday; idem
  
- (j) words importing the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males and the converse; number and gender
  
- (k) a word interpreted in the singular number has a corresponding meaning when used in the plural; idem
  
- (l) words authorizing the appointment of a public officer or functionary, or a deputy, include the power of removing him, reappointing him, or appointing another in his stead or to act in his stead, from time to time in the discretion of the authority in whom the power of appointment is vested; words authorizing appointment include power to remove
  
- (m) words directing or empowering a public officer or functionary to do an act or thing, or otherwise applying to him by his name of office, include his successors in office and his lawful deputy; directions to public officer to apply to his successors and deputy
  
- (n) where reference is made by number to two or more sections, subsections, paragraphs, clauses or other provisions in an Act, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference; reference to sections by numbers
  
- (o) words authorizing the appointment of a public officer or functionary or the appointment of a person to administer an Act include the power of appointing a words authorizing appointment include power to appoint deputy

deputy to perform and have all the powers and authority of such public officer or functionary or person to be exercised in such manner and upon such occasions as are specified in the instrument appointing him or such limited powers and authority as the instrument prescribes. R.S.O. 1970, c. 225, s. 27.

#### PROCEDURE

Appeals to  
Court of  
Appeal

**28.** Where an appeal to the Court of Appeal is permitted by an Act, the appeal shall be made in the time and manner prescribed by the rules of court. R.S.O. 1970, c. 225, s. 28.

Application  
to court or  
judge,  
procedure

**29.** Unless otherwise provided, where an application to a court or a judge is permitted by an Act, the application may be made by originating notice in the manner prescribed by the rules of court. R.S.O. 1970, c. 225, s. 29.

#### WORDS AND TERMS

Words and  
terms

**30.** In every Act, unless the context otherwise requires,

1. "Act" includes enactment;
2. "affidavit", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
3. "Assembly" means the Legislative Assembly of Ontario;
4. "county" includes two or more counties united for purposes to which the Act relates;
5. "Court of Appeal" means the Court of Appeal for Ontario;
6. "Divisional Court" means the Divisional Court of the High Court of Justice for Ontario;
7. "Great Seal" means the Great Seal of Ontario;
8. "herein" used in a provision of an Act relates to the whole Act and not to that provision only;
9. "High Court" means the High Court of Justice for Ontario;

10. "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;
11. "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday or the day fixed by proclamation of the Governor General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, Remembrance Day, and any day appointed by proclamation of the Governor General or the Lieutenant Governor as a public holiday or for a general fast or thanksgiving, and when any holiday, except Remembrance Day, falls on a Sunday, the day next following is in lieu thereof a holiday;
12. "justice of the peace" includes two or more justices of the peace or provincial judges assembled or acting together;
13. "legally qualified medical practitioner", "duly qualified medical practitioner", or any words importing legal recognition of a person as a medical practitioner or member of the medical profession, means a person licensed under Part III of the *Health Disciplines Act*; R.S.O. 1980,  
c. 196
14. "Lieutenant Governor" means the Lieutenant Governor of Ontario, or the chief executive officer or administrator for the time being carrying on the government of Ontario by whatever title he is designated;
15. "Lieutenant Governor in Council" means the Lieutenant Governor of Ontario or the person administering the government of Ontario for the time being acting by and with the advice of the Executive Council of Ontario;
16. "may" shall be construed as permissive;
17. "mental defective" and "mentally defective person" means a person in whom there is a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, and who requires care, supervision and control for his own protection or welfare or for the protection of others;

18. "mental deficiency" means the condition of mind of a mental defective;
19. "mentally ill person" means a person, other than a mental defective, who is suffering from such a disorder of the mind that he requires care, supervision and control for his own protection or welfare, or for the protection of others;
20. "mental illness" means the condition of mind of a mentally ill person;
21. "mental incompetent" and "mentally incompetent person" means a person,
  - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
  - (ii) who is suffering from such a disorder of the mind,  
that he requires care, supervision and control for his protection and the protection of his property;
22. "mental incompetency" means the condition of mind of a mentally incompetent person;
23. "month" means a calendar month;
24. "newspaper", in a provision requiring publication in a newspaper, means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest and sold to the public and to regular subscribers upon a *bona fide* subscription list;
25. "now", "next", "heretofore" and "hereafter" shall be construed as having reference to the date of the coming into force of the Act;
26. "oath", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
27. "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the superintendent, governor,

- jailer, keeper, guard or any other officer or permanent employee of a correctional institution, and also a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process;
28. "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
29. "proclamation" means a proclamation under the Great Seal;
30. "registrar" includes a deputy registrar;
31. "Rules Committee" means the Rules Committee established under the *Judicature Act*;  
R.S.O. 1980,  
c. 223
32. "rules of court", when used in relation to a court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of such court, or for the purpose of an Act directing or authorizing anything to be done by rules of court;
33. "security" means sufficient security, and "sureties" means sufficient sureties, and where these words are used, one person is sufficient therefor unless otherwise expressly required;
34. "shall" shall be construed as imperative;
35. "Supreme Court" means the Supreme Court of Ontario;
36. "swear", in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes affirm and declare, and "sworn" has a corresponding meaning;
37. "writing", "written", or any term of like import, includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any other mode in a visible form;
38. "year" means a calendar year. R.S.O. 1970, c. 225, s. 30.

## SPECIAL INTERPRETATION CLAUSES

R.S.O. 1980,  
c. 223

**31.** The interpretation section of the *Judicature Act* extends to all Acts relating to legal matters. R.S.O. 1970, c. 225, s. 31.

R.S.O. 1980,  
c. 302

**32.** The interpretation section of the *Municipal Act* extends to all Acts relating to municipal matters. R.S.O. 1970, c. 225, s. 32.

## CHAPTER 220

## Interprovincial Subpoenas Act

## 1. In this Act,

Interpre-  
tation

- (a) "court" means any court in a province;
- (b) "province" means any province of Canada and includes the Yukon Territory and the Northwest Territories;
- (c) "subpoena" means a subpoena or other document issued by a court requiring a person within a province other than the province of the issuing court to attend as a witness at a trial or hearing, to produce documents or other things or to testify before the issuing court. 1979, c. 106, s. 1.

2.—(1) A court in Ontario shall receive and adopt as an order of the court a subpoena from a court outside Ontario if,

Adoption  
of inter-  
provincial  
subpoena

- (a) the subpoena is accompanied by a certificate signed by a judge of a superior, county or district court of the issuing province and impressed with the seal of that court, signifying that, upon hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed,
  - (i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and
  - (ii) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that province; and
- (b) the subpoena is accompanied by the witness fees and travelling expenses in accordance with Schedule 1.

(2) The certificate to which reference is made in clause (1) (a) may be in the form set out in Schedule 2 or in a form to the like effect. 1979, c. 106, s. 2.

Form of  
certificate

3. A court in Ontario shall not receive a subpoena from another province under section 2 unless the law of that other province has a provision similar to section 6 providing absolute

Immunity by  
law of other  
province

immunity to a person in Ontario who is required to attend as a witness in the other province from all proceedings of the nature set out in section 6 and within the jurisdiction of the Legislature of that other province except only those proceedings grounded on events occurring during or after the required attendance of the person in the other province. 1979, c. 106, s. 3.

Failure to  
comply with  
adopted sub-  
poena

**4.** Where a person who has been served with a subpoena adopted under section 2 and given the witness fees and travelling expenses in accordance with Schedule 1 not less than ten days, or such shorter period as the judge of the court in the issuing province may indicate in his certificate, before the date the person is required to attend in the issuing court, fails without lawful excuse to comply with the order, he is in contempt of the adopting court and subject to such penalty as that court may impose. 1979, c. 106, s. 4.

Proceedings  
in Ontario

**5.—(1)** Where a party to a proceeding in any court in Ontario causes a subpoena to be issued for service in another province, the party may attend upon a judge of the High Court, or of a county or district court, who shall hear and examine the party or his counsel, if any, and, upon being satisfied that the attendance in Ontario of the person required in Ontario as a witness,

- (a) is necessary for the due adjudication of the proceeding in which the subpoena or other document has been issued; and
- (b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in Ontario,

shall sign a certificate which may be in the form set out in Schedule 2 and shall cause the certificate to be impressed with the seal of the court.

Certificate  
to be  
attached to  
and endorsed  
on subpoena

(2) The certificate shall be either attached to or endorsed on the subpoena. 1979, c. 106, s. 5.

No sub-  
mission to  
jurisdiction

**6.** A person required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario shall be deemed, while within Ontario for the purposes for which the subpoena was issued, not to have submitted to the jurisdiction of the courts of Ontario other than as a witness in the proceedings in which he is subpoenaed and shall be absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of Ontario except only those proceedings grounded on events occurring during or after the required attendance of the person in Ontario. 1979, c. 106, s. 6.

7. Where a person is required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario, he may request the court in Ontario to order additional fees and expenses to be paid in respect of his attendance as a witness and the court, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of his attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court considers sufficient, and amounts paid pursuant to an order made under this section are disbursements in the cause. 1979, c. 106, s. 7.

Order for additional witness fees and expenses

8. This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of the Parliament of Canada. 1979, c. 106, s. 8.

Non-application of Act

9. This Act does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1979, c. 106, s. 9.

Coming into force

## SCHEDULE 1

### WITNESS FEES AND TRAVELLING EXPENSES

The witness fees and travelling expenses required to be given to the witness upon service of an interprovincial subpoena shall be a sum of money, or a sum of money together with valid travel warrants, sufficient to satisfy the following requirements:

1. The fare for transportation by the most direct route via public commercial passenger carrier between the witness's place of residence and the place at which the witness is required to attend in court, in accordance with the following rules:

If the journey or part of it can be made by air, rail or bus, that portion of the journey shall be by airline, rail or bus by tourist class or equivalent class via carriers on which the witness can complete his total journey to the place where he is required to attend in court on the day before his attendance is required.

If railway transportation is necessary for part of the journey and sleeping accommodation would normally be obtained for such a journey, the fare for sleeping accommodation shall be included.

In the calculation of the fare for transportation, the most rapid form of transportation by regularly scheduled carrier shall be accorded priority over all other forms.

If the material which the witness is required to produce in court is of such weight or size as to attract extra fares or charges, the amount so required shall be included.

2. The cost of hotel accommodation for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$60.

3. The cost of meals for the total journey and for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$48.
4. In addition to the amounts described above, an allowance of \$20 for each day of absence from the ordinary residence of the witness, and the witness shall be paid on account of this allowance not less than \$60.

1979, c. 106, Sched. 1.

## SCHEDULE 2

### CERTIFICATE

I, ..... a judge of the ..... certify that I  
(name of judge) (name of court)

have heard and examined ..... who seeks to compel  
(name of applicant party  
or his counsel)

the attendance of ..... to produce documents or  
(name of witness)

other articles or to testify, or both, in a proceeding in Ontario in the  
..... styled  
(name of court in which witness is to appear)

..... I further certify that I am persuaded that the  
(style of proceeding)

appearance of ..... as a witness in the proceeding is  
(name of witness)

necessary for the due adjudication of the proceeding, and, in relation to the nature and importance of cause or proceeding, is reasonable and essential to the due administration of justice in Ontario.

The *Interprovincial Subpoenas Act* makes the following provision for  
the immunity of .....  
(name of witness)

A person required to attend before a court in Ontario by a subpoena adopted by a court outside Ontario shall be deemed, while within Ontario for the purposes for which the subpoena was issued, not to have submitted to the jurisdiction of the courts of Ontario other than as a witness in the proceedings in which he is subpoenaed and shall be absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of Ontario except only those proceedings grounded on events occurring during or after the required attendance of the person in Ontario.

Dated this ..... day of ..... 19...

(seal of the court)

.....  
(Signature of judge)

1979, c. 106, Sched. 2.

## CHAPTER 221

## Investment Contracts Act

## 1. In this Act,

Interpre-  
tation

- (a) "filed" means filed under this Act;
- (b) "investment contract" means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or his assignee, or personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payments made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of the *Insurance Act*;
- (c) "issuer" means a corporation that offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of the *Insurance Act* or a corporation within the meaning of the *Loan and Trust Corporations Act*; R.S.O. 1980,  
cc. 218, 249
- (d) "qualified assets" means,
- (i) cash,
  - (ii) first mortgages on improved real estate and first mortgages made under the *National Housing Act* (Canada), or any predecessor thereof, R.S.C. 1970,  
c. N-10
  - (iii) bonds, debentures, stocks and other securities of the classes authorized under the *Insurance Act* for the investment of the funds of joint stock insurance companies incorporated under the law of Ontario or author-

R.S.C. 1970,  
c. I-15

ized under the *Canadian and British Insurance Companies Act* (Canada) for the investment of the funds of companies registered thereunder,

(iv) real property acquired by foreclosure or in satisfaction of a debt and held for a period of less than seven years, and

(v) such other investments or securities as are designated by the regulations;

(e) "prescribed" means prescribed by the regulations;

(f) "registered" means registered under this Act;

(g) "regulations" means the regulations made under this Act;

(h) "salesman" means a person employed, appointed or authorized by an issuer to sell investment contracts;

(i) "Superintendent" means the Superintendent of Insurance. R.S.O. 1970, c. 226, s. 1.

Filing  
form of  
contract

**2.—**(1) No person shall issue for sale or offer for sale or sell an investment contract unless a copy of the form thereof has been filed with the Superintendent.

Forms not  
to be filed

(2) The Superintendent shall accept for filing a copy of the form of any investment contract tendered for filing unless the sale of investment contracts in such form would be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest. R.S.O. 1970, c. 226, s. 2.

Who may  
issue  
contract

**3.—**(1) No person shall issue for sale an investment contract unless such person is registered as an issuer.

Who may  
sell  
contract

(2) No person shall offer for sale or sell an investment contract unless such person is,

(a) registered as an issuer; or

(b) recorded by the Superintendent as an executive officer of a registered issuer; or

(c) registered as a salesman. R.S.O. 1970, c. 226, s. 3.

What cor-  
porations  
may be  
registered

**4.** No corporation shall be registered under this Act as an issuer unless,

- (a) there has been filed with the Superintendent,
- (i) a certified copy of the Act, letters patent or other instrument of incorporation of the corporation,
  - (ii) a certified list of the names and addresses of the executive officers of the corporation,
  - (iii) a certified copy of the balance sheet of the corporation as at the close of its last completed fiscal year and its auditor's report thereon, and
  - (iv) copies of all forms of investment contracts proposed to be issued by the corporation for sale in Ontario;
- (b) at least \$100,000 of its authorized capital stock has been subscribed and paid in, in cash, and the aggregate of its unimpaired paid-in capital and its surplus amounts to at least \$200,000;
- (c) arrangements satisfactory to the Superintendent have been made for the deposit with a trust company, chartered bank or other suitable depository or depositories in Canada of qualified assets aggregating in amount, when valued as provided in section 20, not less at any time than the amount for which the corporation, under the terms of its investment contracts, is liable as of such time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the Superintendent considers appropriate in the circumstances; except that, in the case of a corporation that maintains with a trust company, chartered bank or other suitable depository or depositories outside Ontario but in Canada a deposit or deposits of qualified assets in such an aggregate amount or other deposit satisfactory to the Superintendent, no further deposit shall be required. R.S.O. 1970, c. 226, s. 4.

**5.—(1)** No person shall be registered as a salesman unless there has been filed with the Superintendent a written notice to the Superintendent from a registered issuer that such person has been employed, appointed or authorized to sell investment contracts issued by such issuer.

Registration  
require-  
ments

Suspension  
of regis-  
tration

(2) Termination of the employment, appointment or authorization of a person employed, appointed or authorized to sell investment contracts issued by an issuer who has filed with the Superintendent a written notice pursuant to subsection (1) operates as a suspension of the registration of such person as a salesman. R.S.O. 1970, c. 226, s. 5.

Application  
for regis-  
tration

**6.** Every application for registration shall be made to the Superintendent in writing upon the prescribed form and shall be accompanied by the prescribed fee. R.S.O. 1970, c. 226, s. 6.

Address  
for  
service

**7.** Every applicant for registration shall state in the application an address for service in Ontario and all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1970, c. 226, s. 7.

Renewal of  
registration

**8.** Every registration and renewal of registration lapses on the 31st day of March, but any registered issuer or salesman desiring renewal of registration shall on or before the 21st day of March make application for renewal of registration upon the prescribed form with the prescribed fee. R.S.O. 1970, c. 226, s. 8.

Granting of  
registration  
or renewal

**9.** The Superintendent shall grant registration or renewal of registration,

(a) to an issuer applying therefor where the applicant is suitable for registration and the sale of investment contracts issued by such issuer would not be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest; and

(b) to a salesman applying therefor where the applicant is suitable for registration and the proposed registration is not objectionable. R.S.O. 1970, c. 226, s. 9.

Liability on  
contracts

**10.** Every registered issuer shall, at all times,

(a) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on such investment contracts, or the portions of such future payments still to be applied to reserves, and with accumulations of interest at an assumed rate provided in the contracts, such rate not to exceed a rate approved by the Superintendent, will attain the face or maturity value specified in the con-

tracts when due, or the amount payable in accordance with the terms of the contracts; or

- (b) maintain reserves of such lesser amount as the Superintendent considers appropriate in the circumstances,

but such reserves shall at no time be less than the amount for which such registered issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding. R.S.O. 1970, c. 226, s. 10.

**11.** Subject to section 12, a registered issuer may invest its funds only in investments in which a joint stock insurance company may invest its funds under Part XVII of the *Insurance Act*, or in investments in which a company registered under the *Canadian and British Insurance Companies Act* (Canada) may invest its funds. R.S.O. 1970, c. 226, s. 11.

Investment of funds

R.S.O. 1980, c. 218

R.S.C. 1970, c. 1-15

**12.**—(1) A registered issuer may acquire and hold for its own use and benefit such real property as is necessary for the transaction of its business, and, upon complying with and subject to the *Mortmain and Charitable Uses Act*, may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of the building not so required.

Power to acquire and hold real property

R.S.O. 1980, c. 297

(2) A registered issuer may acquire and hold such real property as is *bona fide* mortgaged to it by way of security, and such real property as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but such issuer shall sell any such last-mentioned real property within seven years after it has been so acquired. R.S.O. 1970, c. 226, s. 12.

Idem

**13.**—(1) The Superintendent may suspend or cancel any registration upon any grounds that would justify refusal to grant registration or renewal of registration.

Suspension or cancellation of registration

(2) The Superintendent may suspend or cancel the registration of an issuer where it appears to him from the statements and reports filed with him or from an inspection or valuation that the issuer will be unable to provide for the payment of its investment contracts at maturity. R.S.O. 1970, c. 226, s. 13.

Idem

**14.** Notwithstanding any order of the Superintendent, a further application may be made upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1970, c. 226, s. 14.

Further application for registration

## Appeal

**15.**—(1) An applicant for registration or renewal of registration or any person who considers himself aggrieved by a decision of the Superintendent may appeal therefrom to the Divisional Court in accordance with the rules of court. R.S.O. 1970, c. 226, s. 15 (1); *revised*.

## Certificate

(2) The Superintendent shall certify to the Registrar of the Supreme Court the decision appealed from, his reasons therefor, and the documents, inspection reports and evidence, if any, and such other information as he had before him in making the decision. R.S.O. 1970, c. 226, s. 15 (4).

Filing  
statement

**16.**—(1) Not later than thirty days after the expiration of each quarterly period ending March 31st, June 30th, September 30th and December 31st, every registered issuer shall file with the Superintendent a statement, certified to by its auditor or by such officer of the issuer as may be approved by the Superintendent, showing,

- (a) the amount on the last day of the quarterly period required by section 10 to be maintained as reserves by the issuer on all outstanding investment contracts;
- (b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depositary or depositaries in Canada approved by the Superintendent and the value, when valued as provided in section 20, of such qualified assets as at such date; and
- (c) such information as the Superintendent may require.

Filing  
balance  
sheet

(2) Not later than ninety days after the expiration of its fiscal year, every registered issuer shall file with the Superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the Superintendent may require.

Market  
value of  
securities

(3) The market value of all securities at the date of the statement shall be noted on the balance sheet.

## Auditor

(4) The auditor of an issuer registered under this Act shall be a person or firm acceptable to the Superintendent. R.S.O. 1970, c. 226, s. 16.

## Inspection

**17.**—(1) The Superintendent may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesman.

(2) Upon any such inspection, the Superintendent or his <sup>Access on inspection</sup> duly authorized representative is entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesman, and no person shall withhold or destroy, conceal or refuse to furnish any information or thing reasonably required by the Superintendent for the purposes of the inspection. R.S.O. 1970, c. 226, s. 17.

**18.** The Superintendent may at any time require any <sup>Advertising and forms</sup> issuer or salesman to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by such issuer or salesman in connection with the sale of investment contracts. R.S.O. 1970, c. 226, s. 18.

**19.**—(1) Every registered issuer shall notify the Superintendent in writing of, <sup>Notice of changes by issuer</sup>

- (a) any change in its address for service;
- (b) any change in its executive officers; and
- (c) the commencement and termination of the employment, appointment or authorization of each of its salesmen.

(2) Every salesman registered under this Act shall notify <sup>by salesman</sup> the Superintendent in writing of,

- (a) any change in his address for service; and
- (b) every commencement and termination of his employment, appointment or authorization by a registered issuer. R.S.O. 1970, c. 226, s. 19.

**20.**—(1) In any statement or balance sheet to be filed with <sup>Valuation of assets</sup> the Superintendent under this Act, an issuer may value its assets as,

- (a) cash—in the amount thereof in lawful money of Canada;
- (b) first mortgages—in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon;
- (c) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest that are not in default as to principal or interest and that in the opinion of the Superintendent are amply secured,

- (i) if purchased at par, at the par value,
- (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made,

but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

- (d) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest that are in default as to principal or interest or that in the opinion of the Superintendent are not amply secured—at the market value at the date of the statement;
- (e) stocks—at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement; and
- (f) other securities—at the book value but not in excess of the aggregate market value at the date of the statement.

Idem

R.S.C. 1970,  
c. I-15

(2) Where any assets consist of securities whose market values are unduly depressed and in respect of which companies registered under the *Canadian and British Insurance Companies Act* (Canada) have been authorized to use values in excess of such market values, such assets may, with the approval of the Superintendent, be valued as authorized under that Act, but, if it appears to the Superintendent that the amount secured by mortgage on any parcel of real estate together with interest due and accrued thereon is greater than the value of such parcel or that such parcel is not sufficient for the loan and interest, he may procure an appraisalment thereof, and, if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, such loan or mortgage shall be valued at an amount not to exceed the appraised value. R.S.O. 1970, c. 226, s. 20.

Extension  
of time  
prescribed

**21.** The Superintendent may extend the time for the filing of any statement, balance sheet or other document, or the making of any application for renewal of registration under this Act. R.S.O. 1970, c. 226, s. 21.

**22.** Nothing in this Act prevents the sale of an investment contract by or on behalf of the holder thereof where such sale is not made in the course of continued and successive transactions of like character or by a person whose usual business is the issuance or sale of investment contracts. R.S.O. 1970, c. 226, s. 22. <sup>Exempted sales</sup>

**23.—**(1) Every person who contravenes subsection 2 (1) <sup>Offences</sup> or subsection 3 (1) or clause 3 (2) (a) or (b), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(2) Every person who contravenes clause 3 (2) (c) is guilty of an <sup>Idem</sup> offence and on conviction is liable to a fine of not more than \$1,000.

(3) Every person who contravenes any other provision of <sup>Idem</sup> this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 226, s. 23.

**24.** No proceedings to recover the penalties provided in <sup>Recovery of penalties</sup> section 23 shall be instituted except,

- (a) with the written consent of the Attorney General; and
- (b) within two years after the offence is committed.  
R.S.O. 1970, c. 226, s. 24; 1972, c. 1, s. 9 (7).

**25.** The Lieutenant Governor in Council may make regu- <sup>Regulations</sup> lations,

- (a) prescribing the fees payable upon applications for registration and renewal of registration;
- (b) prescribing forms and providing for their use;
- (c) designating investments or securities as qualified assets within the meaning of this Act;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 226, s. 25.

**26.** Notwithstanding the *Securities Act*,

R.S.O. 1980,  
c. 466  
not to apply

- (a) an investment contract shall be deemed not to be a security; and
- (b) an issuer shall be deemed not to be an investment company,

within the meaning of that Act. R.S.O. 1970, c. 226, s. 26.



## CHAPTER 222

## Judges' Orders Enforcement Act

1.—(1) Where jurisdiction is given to a judge as *persona designata* and where the statute under which he acts does not provide otherwise, his orders shall be entered in the same way as orders made by him in matters pending in the court of which he is a judge and may be enforced in the same way as judgments of the court.

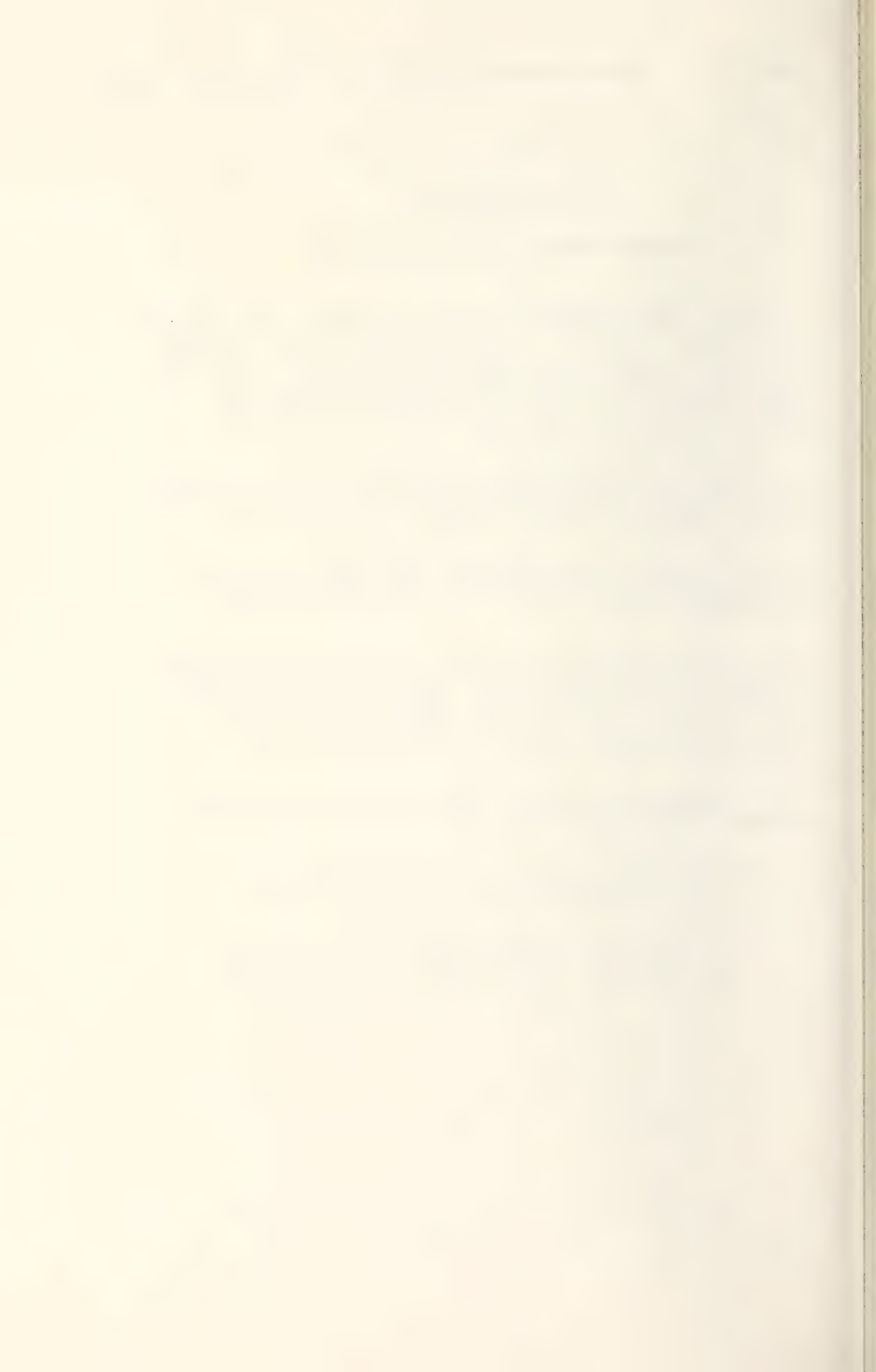
(2) The affidavits used upon an application to a judge as *persona designata* shall be filed with the clerk of the court as upon ordinary applications in matters pending in the court.

(3) The same fee shall be paid for such filings and upon an order made as in ordinary proceedings in the court. R.S.O. 1970, c. 227, s. 1.

2. Where an application is made to a judge as *persona designata* and the statute under which he acts does not provide otherwise, he has the same jurisdiction as to costs and otherwise as in matters in court under his ordinary jurisdiction. R.S.O. 1970, c. 227, s. 2.

3. An appeal lies from an order made by a judge as *persona designata* to the Divisional Court,

- (a) if the right of appeal is given by the statute under which the judge acted; or
- (b) if no such right of appeal is given, then by leave of the judge who made the order or by leave of the Divisional Court. R.S.O. 1970, c. 227, s. 3 (1, 2).



## CHAPTER 223

## Judicature Act

## 1. In this Act,

Interpre-  
tation

- (a) "action" means a civil proceeding commenced by writ or in such other manner as is prescribed by the rules;
- (b) "cause" includes an action, suit or other original proceeding between a plaintiff and a defendant;
- (c) "county" includes a district;
- (d) "county court" includes a district court;
- (e) "county town" includes a district town;
- (f) "Court of Appeal" means the Court of Appeal for Ontario;
- (g) "defendant" includes a person served with a writ of summons or process, or served with notice of, or entitled to attend a proceeding;
- (h) "Divisional Court" means the Divisional Court of the High Court;
- (i) "finance committee" means the finance committee appointed by the Lieutenant Governor in Council under this Act;
- (j) "High Court" means the High Court of Justice for Ontario;
- (k) "judge" includes a chief justice, an associate chief justice, an *ex officio* judge and a supernumerary judge;
- (l) "judgment" includes an order;
- (m) "master" means a Master of the Supreme Court and includes the Senior Master;
- (n) "matter" includes every proceeding in the court not in a cause;

- (o) "party" includes a person served with notice of or attending a proceeding, although not named on the record;
- (p) "petitioner" includes a person making an application to the court, either by petition, motion or summons, otherwise than as against a defendant;
- (q) "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding;
- (r) "pleading" includes a petition or summons, the statement in writing of the claim or demand of a plaintiff, of the defence of a defendant thereto, and of the reply of the plaintiff to a counterclaim of a defendant;
- (s) "proper officer", where the expression is used with respect to a duty to be discharged under this Act or the rules and the duty has been discharged by a particular officer, means that officer and, where the expression is used in respect of a new duty under this Act or the rules, means the officer to whom the duty is assigned by this Act or by the rules, or, if it is not assigned to any officer, means such officer as is from time to time directed to discharge the duty, if it relates to the Court of Appeal, by the Chief Justice of Ontario or, if it relates to the High Court, by the Chief Justice of the High Court;
- (t) "rules" means the rules of court;
- (u) "Rules Committee" means the Rules Committee established under this Act;
- (v) "Supreme Court" means the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 1; 1972, c. 159, s. 1; 1975, c. 30, s. 1; 1979, c. 65, s. 1.

#### CONSTITUTION AND JUDGES OF SUPREME COURT

Jurisdiction  
of Supreme  
Court

**2.** The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a divisional court of that court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 2.

**3.** The Supreme Court shall continue to consist of two Branches branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario. R.S.O. 1970, c. 228, s. 3.

**4.**—(1) The Court of Appeal shall consist of a chief Court of Appeal justice who shall be the president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario, and thirteen other judges to be called justices of appeal. R.S.O. 1970, c. 228, s. 4 (1); 1974, c. 81, s. 1; 1977, c. 45, s. 1 (1).

(2) Where the Chief Justice of Ontario is absent from the Judicial District of York or where he is for any reason Absence of Chief Justice unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario in his stead or, where both are absent or unable to act, by the senior justice of appeal who is able to act. 1977, c. 45, s. 1 (2).

**5.**—(1) The High Court shall consist of a chief justice High Court of Justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court, and forty other judges. R.S.O. 1970, c. 228, s. 5 (1); 1977, c. 45, s. 2 (1).

(2) Where the Chief Justice of the High Court is absent from Ontario or where he is for any reason unable to act, Absence of Chief Justice of the High Court his powers shall be exercised and his duties performed by the Associate Chief Justice of the High Court in his stead or, where both are absent or unable to act, by the senior judge of the High Court who is able to act. 1977, c. 45, s. 2 (2).

**6.** For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the Super-numerary judge additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act* R.S.C. 1970, c. J-1 (Canada) to hold office only as a supernumerary judge of that court. 1972, c. 159, s. 2.

**7.**—(1) There shall be a division of the High Court Divisional Court of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time.

(2) Every judge of the High Court is also a judge of Jurisdiction of judges the Divisional Court. R.S.O. 1970, c. 228, s. 6.

Rank and  
precedence

8.—(1) The Chief Justice of Ontario has rank and precedence over all the other judges.

Idem

(2) The Chief Justice of the High Court has rank and precedence next after the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 8 (1, 2).

Idem

(3) The Associate Chief Justice of Ontario has rank and precedence next after the Chief Justice of the High Court and the Associate Chief Justice of the High Court has rank and precedence next after the Associate Chief Justice of Ontario. 1977, c. 45, s. 3 (1).

Idem

(4) The justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment. 1979, c. 65, s. 2 (1).

Judges  
of the  
Supreme  
Court

9. A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is *ex officio* a judge of the branch of which he is not a member, and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority. R.S.O. 1970, c. 228, s. 9.

Oath of  
office

10.—(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

I do solemnly and sincerely promise and swear that I will  
duly and faithfully, and to the best of my skill and knowledge,  
execute the powers and trust reposed in me as . . . . .  
So help me God.

How oath  
to be  
administered

(2) The oath shall be administered to a chief justice before the Lieutenant Governor in Council, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court, unless the Lieutenant Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant Governor in Council may direct. R.S.O. 1970, c. 228, s. 10.

Judgment  
after leaving  
office

11.—(1) Where a judge resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within eight weeks after such event, give judgment in any cause, action or matter previously tried or heard before him, as if he had not so

resigned, been appointed, elected or ceased to hold office. 1972, c. 159, s. 4; 1979, c. 65, s. 3.

(2) Where he has heard a cause, action or matter jointly with other judges in the Court of Appeal or Divisional Court, he may at any time within the period mentioned in subsection (1) take part in the giving of judgment by that court as if he were still a member of it. R.S.O. 1970, c. 228, s. 11 (2); 1976, c. 16, s. 2 (1).

When to  
take part in  
judgment

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in the Court of Appeal or Divisional Court is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them, may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and, in the case of absence, as if the absent judge were present and taking part in the judgment. R.S.O. 1970, c. 228, s. 11 (3); 1976, c. 16, s. 2 (2).

Judgment  
of remain-  
ing judges  
or majority

(4) Where a judge who has heard a cause, action or matter in the Court of Appeal or Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present. R.S.O. 1970, c. 228, s. 11 (4); 1976, c. 16, s. 2 (3).

Reading  
judgment  
of absent  
judge

#### SEAL

**12.** There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 12.

Seal

#### JURISDICTION AND LAW

**13.**—(1) The Court of Appeal shall exercise that part of the jurisdiction vested in the Supreme Court that on the 31st day of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by the Court of Appeal in the name of the Supreme Court.

Jurisdiction  
of Court  
of Appeal

(2) Except as provided by subsection (1), all the jurisdiction vested in the Supreme Court shall be exercised by the High Court in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 13.

Jurisdiction  
of High  
Court

**14.**—(1) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by the Chief Justice of Ontario or by a justice of

Jurisdiction  
of Chief  
Justice and  
justices of  
appeal

appeal, is vested in and may be exercised by a judge of the Court of Appeal, and shall be exercised in the name of the Supreme Court.

Jurisdiction  
of judges of  
the High  
Court

(2) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by a judge of the High Court is vested in and may be exercised by a judge of the High Court, and shall be exercised in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 14.

Provisions  
for absence  
or vacancy  
in office of  
a judge

**15.** Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge has all the power and authority of a judge of the Supreme Court. R.S.O. 1970, c. 228, s. 15; 1972, c. 159, s. 5.

Sittings of  
courts

**16.**—(1) Subject to the rules, the courts and the judges thereof, or any commissioner appointed under section 53, may sit and act, at any time and at any place, for the transaction of any part of the business of the courts, or of the judges or commissioner, or for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

Where  
Court of  
Appeal to sit

(2) Subject to subsection (1), the Court of Appeal shall sit at Toronto. R.S.O. 1970, c. 228, s. 16.

Jurisdiction  
of Divisional  
Court

**17.** The Divisional Court has jurisdiction to hear, determine and dispose of,

- (a) applications and appeals referred to the Divisional Court under any Act;
- (b) all appeals from interlocutory judgments or orders of a judge of the High Court with leave as provided in the rules;
- (c) all appeals from final judgments or orders of the master, local judge, local master, or other officer of the Supreme Court, except final judgments or orders made by a local judge under the *Divorce Act* (Canada). 1971, c. 57, s. 1, *part*; 1972, c. 48, s. 1; 1977, c. 51, s. 1, *revised*.

## ADMINISTRATION OF JUSTICE

**18.** In every civil cause or matter, law and equity shall be administered according to the following rules: Rules of law and equity

1. Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a defendant in such cause or matter, or to any relief founded upon a legal right that before the commencement of *The Ontario Judicature Act, 1881* could only have been given by a court of equity, the Supreme Court and every judge shall give to the plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the commencement of that Act. Equitable relief
2. No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether or not any consequential relief is or could be claimed. Declaratory judgments and orders
3. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by a plaintiff in such cause or matter, or alleges any ground of equitable defence to a claim of the plaintiff in such cause or matter, the court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the commencement of *The Ontario Judicature Act, 1881*. Equitable defences
4. The court and every judge also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff as such defendant has properly claimed by his pleading, and as the court or any judge might have granted in a suit instituted for that Relief that may be granted to defendants

purpose by the same defendant against the same plaintiff, and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to the rules or to any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose, and every person served with any such notice shall henceforth be considered a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

Courts to  
take notice  
of equitable  
rights and  
duties

5. The court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of *The Ontario Judicature Act, 1881*.

44 V., c. 5

Restraining  
proceedings

6. No cause or proceeding shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to *The Ontario Judicature Act, 1881*, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto, but nothing in this Act disables the court from directing a stay of proceedings in any cause or matter pending before it, and any person, whether or not a party to any such cause or matter, who would have been entitled, before the commencement of *The Ontario Judicature Act, 1881*, to apply to a court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the court by motion in a summary way, for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is considered just.

7. Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity and the other express provisions of this Act, the court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as they would have been recognized and given effect to before the commencement of *The Ontario Judicature Act, 1881* by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court. Giving effect to legal claims
8. The court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it has power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies as any of the parties appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. Multiplicity of proceedings to be avoided
9. (i) In case bonds or debentures are secured by a mortgage or charge by virtue of a trust deed or other instrument and whether or not provision is contained in the trust deed or other instrument creating such mortgage or charge giving to the holders of such bonds or debentures or a majority, or a specified majority of them, power to sanction the sale, transfer or exchange of the mortgaged or charged premises for a consideration other than cash, and in case any action has been brought or is brought for the purpose of enforcing or realizing upon any such mortgage or charge, or for the execution of the trusts in any such trust deed or other instrument with or without other relief, the court may order a meeting or meetings of the holders of such bonds or debentures to be summoned and held in such manner as the court directs, and if the holders of such bonds or debentures sanction or approve the sale, transfer or exchange of the property so mortgaged or charged for a consideration wholly or in part other than cash, the court may in such action order and approve such sale on such terms in all Sanction of court to sale under mortgage securing debentures

respects as the court thinks fair and reasonable having regard to the interests of all parties interested in the premises and property so mortgaged or charged, and in such order or by a subsequent order may make provision in such manner, on such terms in all respects as the court considers proper, for the transfer to and vesting in the purchaser or his or its assigns of the whole or any part of the premises and property so mortgaged or charged and so sold, and for the payment of the proper costs, charges and expenses and remuneration of any trustee or trustees under such trust deed or other instrument and of any receiver or receiver and manager appointed by the court, and of any committee or other persons representing holders of such bonds or debentures, and for the distribution or other disposition of the proceeds of such sale, and for the protection of any or all persons whose interests are affected by such order, and for all such incidental, consequential and supplemental matters as the court considers just.

(ii) The approval of the holders of any such bonds or debentures may be given by resolution passed at a meeting by the votes of the holders of a majority in principal amount of such bonds or debentures, represented and voting in person or by proxy, and holding not less than 50 per cent in principal amount, or such lesser amount as the court under all the circumstances approves, of the issued and outstanding bonds or debentures in question. R.S.O. 1970, c. 228, s. 18.

Injunctions  
and receivers

**19.**—(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the court considers just, and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or, if out of possession, does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable. R.S.O. 1970, c. 228, s. 19 (1).

(2) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral, or otherwise injurious to public morals. R.S.O. 1970, c. 228, s. 19 (2); 1972, c. 1, s. 9 (7). Mandamus or injunction restraining obscene publications

(3) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt, ridicule or mockery Her Majesty or any member of the Royal Family. R.S.O. 1970, c. 228, s. 19 (3); 1972, c. 1, s. 9 (7). Actions restraining publication of articles or pictures insulting Her Majesty

(4) The court may, in addition to making such order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature. R.S.O. 1970, c. 228, s. 19 (4). Recognizance

(5) Upon the making of such order, the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings. R.S.O. 1970, c. 228, s. 19 (5); 1972, c. 1, s. 9 (7). Service of order

(6) An action under subsection (2) or (3) may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (2) or (3). Against whom action may be brought

(7) In an action brought under subsection (2), (3) or (6), the judge may on such material as he sees fit grant an interlocutory injunction or mandamus. R.S.O. 1970, c. 228, s. 19 (6, 7). Interlocutory injunctions

**20.**—(1) In this section, “labour dispute” means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. Interpretation

No *ex parte*  
applications  
for  
injunctions

(2) Subject to subsection (7), no injunction to restrain a person from any act in connection with a labour dispute shall be granted *ex parte*.

Steps before  
application  
for  
injunction

(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

Evidence

(4) Subject to subsection (7), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.

Notice of  
application  
for interim  
injunction

(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection (7), only after two days notice of the application therefor has been given to the person or persons named in the application.

Idem

(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,

- (a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and
- (b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

Idem

(7) Where notice as required by subsections (5) and (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction; and

- (b) notice as required by subsections (5) and (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 87 of the *Labour Relations Act*, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and

- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by *viva voce* evidence.

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

Misrepresentation  
as contempt  
of court

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal. R.S.O. 1970, c. 228, s. 20.

Appeal

**21.** Where the court has jurisdiction to entertain an application for an injunction against a breach of a covenant, contract or agreement, or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the court directs, or the court may grant such other relief as is considered just. R.S.O. 1970, c. 228, s. 21.

Damages,  
etc.

**22.** The court has power to relieve against all penalties and forfeitures, and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters, as are considered just. R.S.O. 1970, c. 228, s. 22.

Relief  
against  
penalties,  
etc.

**23.—(1)** In any action in which the Attorney General for Canada or the Attorney General for Ontario is a party plaintiff and the other attorney general is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any Act of the

Jurisdiction  
as to validity  
of statutes

Legislature or any Act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief be prayed or sought. R.S.O. 1970, c. 228, s. 23 (1); 1972, c. 1, s. 9 (7).

**Appeal**

(2) The judgment in any such action is subject to appeal as in ordinary cases. R.S.O. 1970, c. 228, s. 23 (2).

**Stay of proceedings if action for same cause is pending out of Ontario**

**24.** Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the court may make an order staying proceedings in the Supreme Court until satisfactory proof is offered to the court that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. R.S.O. 1970, c. 228, s. 24.

**Rules of equity prevail**

**25.** In questions relating to the custody and education of minors and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail. R.S.O. 1970, c. 228, s. 25.

**Sections 18 to 25 apply to all courts**

**26.** Sections 18 to 25 are in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts. R.S.O. 1970, c. 228, s. 26.

**APPEALS****Certain orders not subject to appeal**

**27.** No order of the High Court or of a judge thereof made with the consent of the parties is subject to appeal, and no order of the High Court or of a judge thereof as to costs only that by law are left to the discretion of the court is subject to appeal on the ground that the discretion was wrongly exercised or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the court or judge making the order. R.S.O. 1970, c. 228, s. 27.

**Appeals to Court of Appeal**

**28.—**(1) Except where it is otherwise provided by statute and subject to the rules regulating the terms and conditions on which appeals may be brought, an appeal lies to the Court of Appeal from,

(a) any final judgment or order of a judge of the High Court, whether at trial or otherwise; or

- (b) any judgment or order of the Divisional Court, with leave as provided by the rules, on any question that is not a question of fact alone. 1971, c. 57, s. 3, *part*; 1977, c. 51, s. 2.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature. Statutory appeals

(3) The Court of Appeal also has jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court. New trials

(4) Nothing in this section limits the generality of subsection 13 (1). R.S.O. 1970, c. 228, s. 29 (3-5). Generality of s. 13 (1) not affected

**29.—**(1) The court upon an appeal may give any judgment that ought to have been pronounced and may make such further or other order as is considered just. Court may pronounce proper judgment

(2) The court has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy. Power to draw inferences of fact and to give judgment

(3) The powers conferred by subsections (1) and (2) may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed. R.S.O. 1970, c. 228, s. 30. Where appeal is against part only

**30.—**(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned. New trial not to be granted in certain cases

Judgment  
as to one  
part and  
new trial  
as to others

(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties. R.S.O. 1970, c. 228, s. 31.

New trial  
may be  
ordered  
on any  
question

**31.** A new trial may be ordered upon any question without interfering with the decision upon any other question. R.S.O. 1970, c. 228, s. 32.

Disagreement  
of jury

**32.** Where the jury disagrees or makes no finding on which judgment can be entered, the court may, on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment. R.S.O. 1970, c. 228, s. 33.

Power of  
judge of  
Court of  
Appeal

**33.** In any cause or matter pending before the Court of Appeal, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Court of Appeal. R.S.O. 1970, c. 228, s. 34.

Decisions  
may be  
referred to  
Court of  
Appeal

**34.—**(1) If a judge considers a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to the Court of Appeal.

Procedure

(2) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal. R.S.O. 1970, c. 228, s. 35.

#### CONSTITUTIONAL QUESTIONS

Notice to  
be given  
before Act  
declared  
invalid

**35.—**(1) Where in an action or other proceeding the constitutional validity of any Act or enactment of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Attorney General for Ontario. R.S.O. 1970, c. 228, s. 36 (1); 1972, c. 1, s. 9 (7).

Form of  
notice

(2) The notice shall state what Act or part of an Act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument. R.S.O. 1970, c. 228, s. 36 (2, 3). Six days notice

(4) The Attorney General for Canada and the Attorney General for Ontario are entitled as of right to be heard either in person or by counsel notwithstanding that the Crown is not a party to the action or proceeding. R.S.O. 1970, c. 228, s. 36 (4); 1972, c. 1, s. 9 (7). Right of Attorneys General to be heard

(5) Where in an action or proceeding to which this section applies the Attorney General for Canada or the Attorney General for Ontario appears in person or by counsel, each shall be deemed to be a party to the action or proceeding for the purpose of an appeal from any adjudication as to the constitutional validity of any Act or enactment in question in the action or proceeding and each has the same rights with respect to an appeal as any other party to the action or proceeding. R.S.O. 1970, c. 228, s. 36 (5); 1972, c. 1, s. 9 (7). Right of Attorneys General to appeal

#### INTEREST

**36.**—(1) In this section, “prime rate” means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada. Prime rate defined

(2) For the purposes of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication. Idem

(3) Subject to subsection (6), a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon, Prejudgment interest

(a) at the prime rate existing for the month preceding the month on which the action was commenced; and

(b) calculated,

(i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of the judgment, or

(ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim

to the person liable therefor to the date of the judgment.

Special  
damages

(4) Where the judgment includes an amount for special damages, the interest calculated under subsection (3) shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in subclause (3) (b) (ii) and at the date of the judgment.

Exclusions

(5) Interest under this section shall not be awarded,

- (a) on exemplary or punitive damages;
- (b) on interest accruing under this section;
- (c) on an award of costs in the action;
- (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;
- (e) except by consent of the judgment debtor, where the judgment is given on consent; or
- (f) where interest is payable by a right other than under this section.

Discretion  
of judge

(6) The judge may, where he considers it to be just to do so in all the circumstances,

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) allow interest under this section for a period other than that provided,

in respect of the whole or any part of the amount for which judgment is given. 1977, c. 51, s. 3 (1), *part*.

Application  
of section

(7) This section applies to the payment of money under judgments delivered on or after the 25th day of November, 1977, but no interest shall be awarded under this section for a period before that date. 1977, c. 51, s. 3 (2).

Interest on  
judgments

**37.**—(1) A verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, at the prime rate established in the same manner as for the purposes of section 36, notwithstanding that the entry of judg-

ment has been suspended by a proceeding in the action, including an appeal.

(2) The judge may, where he considers it to be just to do so in all the circumstances, Discretion of judge

(a) disallow interest under this section;

(b) fix a rate of interest higher or lower than the prime rate;

(c) fix a date other than the date of judgment from which interest is to run,

in respect of the whole or any part of the amount for which judgment is given. 1979, c. 65, s. 4 (1).

(3) This section does not apply to a verdict rendered or judgment given before the 22nd day of June, 1979. 1979, c. 65, s. 4 (2). Application of section

#### CERTIFICATE OF LIS PENDENS

**38.**—(1) The institution of an action or the taking of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the action or proceeding to any person not a party to it until, where the land is registered under the *Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the proper officer of the court, has been registered in the land registry office of the registry division in which the land is situate. Action, etc., not notice unless caution or certificate registered  
R.S.O. 1980, c. 230

(2) The certificate may be in the following form: Form

I certify that in an action or proceeding in the Supreme Court of Ontario between *A.B.*, of.....and *C.D.*, of....., some title or interest is called in question in the following land: (*describing it*).

Dated at (*stating place and date*).

(3) Subsection (1) does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or to enforce a lien under the *Mechanics' Lien Act*. R.S.O. 1970, c. 228, s. 41. Exception  
R.S.O. 1980, c. 261

(4) Any person who registers a certificate or caution referred to in subsection (1) without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration. Liability for unsubstantiated claim

(5) The liability for damages under subsection (4) and the amount thereof may be determined in an action commenced therefor in the court in which the certificate is issued or by Recovery of damages

application in the proceeding for an order to vacate the caution or certificate or in the action or proceeding in which the question of title to or interest in the land is determined. 1977, c. 51, s. 4 (1).

Application

(6) Subsections (4) and (5) do not apply in respect of cautions or certificates registered before the 25th day of November, 1977. 1977, c. 51, s. 4 (2).

Order  
vacating  
caution or  
certificate

**39.**—(1) Where a caution or certificate has been registered and the plaintiff or other party at whose instance it was issued does not in good faith prosecute the action or proceeding, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate. R.S.O. 1970, c. 228, s. 42 (1); 1974, c. 81, s. 2.

Where land,  
etc., not  
claimed

(2) Where a caution or certificate has been registered and the plaintiff's claim is not solely to recover land or an estate or interest in land but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as is considered just. R.S.O. 1970, c. 228, s. 42 (2); 1977, c. 51, s. 5 (1).

Upon other  
grounds

(3) A judge of the court in which the action or proceeding was commenced may at any time vacate the registration upon any other ground that is considered just. R.S.O. 1970, c. 228, s. 42 (3); 1977, c. 51, s. 5 (2).

Costs

(4) On an application under this section, the judge may order any of the parties to it to pay the costs of any of the other parties to it, or may make any other order with respect to costs that under all the circumstances is considered just. R.S.O. 1970, c. 228, s. 42 (4).

Appeal and  
registration

(5) The order vacating a caution or certificate is subject to appeal according to the practice in like cases and may be registered in the same manner as a judgment affecting land, except that the judge granting the order may order a stay of the registration for the purposes of the appeal. 1977, c. 51, s. 5 (3).

Effect

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not

incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights are not affected by his being aware of such allegations. R.S.O. 1970, c. 228, s. 42 (6).

(7) The jurisdiction of a judge of the High Court under this section and section 38 may be exercised by a local judge of the High Court. 1977, c. 51, s. 5 (4). Jurisdiction of local judge

#### APPELLATE COURTS

**40.** In any cause or matter pending before the Divisional Court, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Divisional Court. 1976, c. 16, s. 3. Power of judge of Divisional Court

**41.**—(1) Except where otherwise provided, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together, and always before an uneven number of justices. Hearing of appeals

(2) An appeal to the Court of Appeal from an interlocutory order for corollary relief under the *Divorce Act* (Canada) may be heard without leave before one justice of appeal sitting alone. Exception R.S.C. 1970, c. D-8

(3) The Court of Appeal may sit in one division or in two or more divisions as the Chief Justice of Ontario directs from time to time. Divisions

(4) The justices to sit from time to time and the appeals to be heard shall be determined by the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 43. C.J.O. to determine

**42.**—(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court. C.J.O. may assign certain work

(2) Whenever occasion requires, a judge who is not a member of the Court of Appeal may sit in the place of a judge of the Court of Appeal. Ad hoc judges of Court of Appeal

(3) Subsection (2) applies where a vacancy occurs in the Court of Appeal by death or resignation of a judge or otherwise, until his successor is appointed. When judges of one court may sit in another

(4) A judge who sits in the place of a judge of the Court of Appeal shall be conclusively deemed to have Right of judge who sits in place of another not to be questioned

been entitled and qualified to so sit within the meaning of subsections (2) and (3).

Judge may  
give judgment  
after ceasing to  
be judge of  
the Court of  
Appeal

(5) A judge who has sat in the Court of Appeal on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that court.

Judge not to  
hear appeal from  
his own  
judgment

(6) A judge shall not sit on the hearing of an appeal from a judgment or order made by himself. R.S.O. 1970, c. 228, s. 44.

C.J.O. and  
justices of  
appeal not  
to be  
assigned  
certain work  
without  
consent

43. Except as provided in section 42, neither the Chief Justice of Ontario nor any of the justices of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal. R.S.O. 1970, c. 228, s. 45.

Presiding  
judge

44. The Chief Justice of Ontario, when present, shall preside and, in his absence, the senior justice present shall preside. R.S.O. 1970, c. 228, s. 46.

#### HIGH COURT

Business to  
be disposed  
of by one  
judge

45.—(1) Every action and proceeding in the High Court and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a judge, and where he sits in court, he constitutes the court.

Judge not  
to reserve  
questions

(2) Subject to section 34, a judge of the High Court shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal.

Arrange-  
ments for  
holding of  
courts

(3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court, or the arrangement from time to time of judges to hold such courts, or to transact such business, shall be made by the judges of that branch, with power in the Chief Justice of the High Court to make such readjustment or reassignment as is necessary from time to time. R.S.O. 1970, c. 228, s. 47.

#### DIVISIONAL COURT

Hearings of  
Divisional  
Court

46.—(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of before three judges thereof sitting together of whom one shall be the Chief Justice of the High Court or a judge of the High Court designated by him, and the sitting shall be presided over by the Chief Justice of the High Court or his designee. R.S.O. 1970, c. 228, s. 48 (1).

(2) A proceeding in the Divisional Court may be heard, determined and disposed of by a judge of the Divisional Court sitting singly where the proceeding, Judge sitting singly

(a) is an appeal under clause 17 (c); or

(b) is in a matter that the Chief Justice of the High Court or a judge designated by him is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard by a judge sitting singly.  
1979, c. 65, s. 5.

(3) The Divisional Court may sit in two or more sections as the Chief Justice of the High Court may direct from time to time. Sections

(4) In accordance with the rules, sittings of the Divisional Court shall be held in Toronto continuously, except during vacations and holidays, and shall be held in London, Ottawa, Sudbury, Sault Ste. Marie and Thunder Bay at such times as the Chief Justice of the High Court may fix for the expeditious dispatch of the matters set down for hearing at those places. Time and place of sittings

(5) A judge of the Divisional Court shall not sit as a member of the Divisional Court considering an appeal from his own decision. R.S.O. 1970, c. 228, s. 48 (2-4). Judge not to sit on own appeal

#### WEEKLY COURTS

47.—(1) Sittings of the High Court shall be held in accordance with the rules of court at Ottawa and London on at least one day in each alternate week, except during vacation. Ottawa and London

(2) Nothing in subsection (1) affects any other sittings of the High Court. R.S.O. 1970, c. 228, s. 49. Elsewhere

#### TRIAL SITTINGS

48.—(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil causes, matters and issues and for the trial of criminal matters and proceedings. Sittings for trials

(2) Separate sittings may be held for the trial of civil causes, matters and issues that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings. Separate sittings may be held

(3) Sittings may be held concurrently or separately as may be directed by the judges appointing the days therefor or by the judges presiding at the sittings. Sittings may be held concurrently

Jury cases  
to be tried  
first

(4) Subject to the rules, where a sittings is held for the trial of civil causes, matters and issues that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

Sittings  
to be held  
in court  
house

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge may direct.

Two sittings  
yearly in  
each county

(6) Subject to the rules, at least two sittings shall be held in each year in and for every county, and additional sittings shall be provided when necessary for the due dispatch of business. R.S.O. 1970, c. 228, s. 50.

Who may  
preside

**49.**—(1) Every such sittings shall be presided over by one of the judges of the Supreme Court, or, on the request in writing of a judge of the Supreme Court, by a retired judge of that court, or by a judge of a county court, or by one of Her Majesty's counsel learned in the law appointed for Ontario.

Powers of  
presiding  
judge

(2) Such judge or counsel while holding the sittings possesses and enjoys and may exercise all the powers and authorities of a judge of the High Court, and in civil proceedings may reserve the giving of his decision on questions raised at the trial and afterwards give the same, and such decisions have the like force and effect as the decision of a judge of the High Court. R.S.O. 1970, c. 228, s. 51.

Non-arrival  
of judge

**50.** Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 6 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge or from the Chief Justice of the High Court are received. R.S.O. 1970, c. 228, s. 52.

Hours of  
sittings

**51.**—(1) No sittings shall begin on any day before 9 o'clock in the forenoon, nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon.

Non-  
observance  
of hours

(2) Failure to observe any of the provisions of subsection (1) does not render the trial or other proceedings void. R.S.O. 1970, c. 228, s. 53.

**52.** Non-jury actions to be tried in any county, except the Judicial District of York or the Judicial District of York Region, may be entered for trial at any sittings of the High Court in such county. R.S.O. 1970, c. 228, s. 54.

Entering  
non-jury  
actions  
for trial

**53.**—(1) A commission of assize or any other commission, either general or special, may be issued by the Lieutenant Governor in Council assigning to the person therein named the duty of trying and determining within any place or district named for that purpose by the commission, any cause or matter, or any question or issue of fact or of law or partly of fact and partly of law, in any cause or matter depending in the Supreme Court, or for the exercise of any civil or criminal jurisdiction capable of being exercised by the court.

Commissions  
of assize  
and other  
commissions

(2) A commissioner, when exercising any jurisdiction so assigned to him, shall be deemed to constitute the court. R.S.O. 1970, c. 228, s. 55.

Commis-  
sioner to  
be a court

#### ACTIONS ON QUEBEC JUDGMENTS

**54.** Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service on the defendant or party sued was personal, no defence that might have been set up to the original action may be made to the action on the judgment. R.S.O. 1970, c. 228, s. 56.

Action on  
Quebec  
judgment  
where  
service  
personal

**55.** Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made, any defence that might have been set up to the original action may be made to the action on the judgment. R.S.O. 1970, c. 228, s. 57.

Action on  
Quebec  
judgment  
where  
service not  
personal

**56.**—(1) Where an action is brought on a judgment obtained in the Province of Quebec, the costs incurred in obtaining the judgment in that Province are not recoverable without the order of a judge directing their allowance.

Costs

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred, nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim. R.S.O. 1970, c. 228, s. 58.

Conditions  
under which  
order may  
be made

#### MANNER AND PLACE OF TRIAL

**57.** Actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury, unless the parties in person or by their solicitors or counsel waive such trial. R.S.O. 1970, c. 228, s. 59; 1978, c. 2, s. 69 (6).

Certain  
actions to  
be tried  
by a jury

Certain  
actions  
to be tried  
without a  
jury

**58.** Actions against a municipal corporation or a board of trustees of a police village for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county that constitutes the municipality or in which the municipality or police village is situate. R.S.O. 1970, c. 228, s. 60.

Issues of  
fact to  
be tried  
without  
jury

**59.**—(1) Subject to the rules and except where otherwise expressly provided by this Act, all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

Judge may  
direct trial  
by jury

(2) The judge may nevertheless direct that the issues or any of them be tried and the damages be assessed by a jury. R.S.O. 1970, c. 228, s. 61.

Jury notice

**60.**—(1) Subject to the rules, if a party desires that the issues of fact be tried or the damages be assessed by a jury, he may, at any stage of the proceedings, but not later than the fourth day after the close of the pleadings, or, if notice of trial or assessment is served before that time, within two days after service of such notice or within such other time as is allowed by a judge, file and serve on the opposite party a notice in writing requiring that the issues be tried or the damages be assessed by a jury, and if such notice is given, subject to subsection (3), they shall be tried or assessed accordingly.

Copy of  
notice

(2) A copy of the notice shall be attached to the certified copy of the pleadings prepared for use at the trial.

Jury may be  
dispensed  
with

(3) Notwithstanding the giving of the notice, the issues of fact may be tried or the damages may be assessed without the intervention of a jury if the judge presiding at the sittings so directs or if it is so ordered by a judge.

Subs. (1) not  
to apply  
to certain  
causes, etc.  
36 V., c. 8

(4) Subsection (1) does not apply to causes, matters or issues over the subject of which the Court of Chancery had exclusive jurisdiction before the commencement of *The Administration of Justice Act of 1873*. R.S.O. 1970, c. 228, s. 62.

Effect of  
agreement,  
etc., as to  
place of  
trial

**61.**—(1) Subject to subsection (2), no proviso, condition, stipulation, agreement or statement that provides for the place of trial of an action, matter or other proceeding is of any force or effect.

Motion by  
defendant  
to change  
venue

(2) Subsection (1) does not apply unless and until the defendant moves to change the place of trial. R.S.O. 1970, c. 228, s. 63.

## JURY TRIALS

**62.**—(1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors. Agreement of five jurors to be sufficient

(2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer. R.S.O. 1970, c. 228, s. 64. Not necessary for same five jurors to agree to all answers

**63.** If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he considers just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous. R.S.O. 1970, c. 228, s. 65. Death or illness of juror or discovery of interest during trial

**64.**—(1) In the absence of a direction to the contrary of the judge, a jury may give a general or special verdict, but shall give a special verdict if he so directs and shall not give a general verdict if directed by him not to do so. General or special verdicts

(2) This section does not apply to actions of libel. R.S.O. 1970, c. 228, s. 66. Exception

**65.**—(1) Upon a trial by jury, except in an action of libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him, and the jury shall answer such questions, and shall not give any verdict. Answers to questions

(2) In an action, tried by a judge and jury, to which subsection 167 (1) of the *Highway Traffic Act* applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought. Negligent acts specified by jury  
R.S.O. 1980, c. 198

(3) Judgment may be directed to be entered on the answers to such questions. R.S.O. 1970, c. 228, s. 67. Judgment

**66.** In actions of malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution. R.S.O. 1970, c. 228, s. 68. Malicious prosecution actions

Interpre-  
tation**67.**—(1) In this section,

- (a) “judge” means the person presiding at a judicial proceeding;
- (b) “judicial proceeding” means a proceeding of a court of record;
- (c) “precincts of the building” means the space enclosed by the walls of the building.

Prohibition  
against  
photography,  
etc., at  
judicial  
proceedings

## (2) Subject to subsection (3), no person shall,

- (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
  - (i) at a judicial proceeding, or
  - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
  - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or
- (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause (a).

## Exceptions

(3) Subsection (2) does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
- (b) in connection with any investive, ceremonial, naturalization or similar proceedings; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.

## Offence

(4) Every person who is in contravention of this section is guilty of an offence and on conviction is liable to a

fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 81, s. 3.

#### QUASHING CONVICTIONS, ETC.

**68.**—(1) Where it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by motion in the first instance instead of by certiorari, rule or order nisi. Motion substituted for certiorari, etc.

(2) Notice of the motion shall be served at least six days before the return day thereof upon the provincial judge or justice of the peace making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant, if any, and upon the clerk of the peace if the proceedings have been returned to his office, and the notice shall specify the objections intended to be raised. Service of notice of motion

(3) Upon the notice of motion shall be endorsed a copy of subsection (4) and a notice in the following form, addressed to the provincial judge or justice of the peace, coroner, or clerk of the peace, as the case may be: Endorsement on notice of motion

You are hereby required forthwith after service hereof to return to the office of the Registrar of the Supreme Court at Toronto, the conviction (*or as the case may be*) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and entirely as they remain in your custody, together with this notice.

Dated

To A.B.

Provincial Judge (*or as the case may be*).

C.D.

Solicitor for the Applicant.

(4) Upon receiving the notice so endorsed, the provincial judge, justice of the peace, coroner or clerk of the peace shall forthwith return to the office of the Registrar of the Supreme Court at Toronto, the conviction, order, warrant or inquisition, and the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed upon it in the following form: Return by provincial judge, etc.

Pursuant to the within notice I herewith return to this Honourable Court the following papers and documents:

1. The conviction (*or as the case may be*).
2. The information and the warrant issued thereon.

3. The evidence taken at the hearing.

4. (*Any other papers or documents touching the matter*).

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in this notice of motion.

Effect of  
certificate

(5) The certificate has the same effect as a return to a writ of certiorari or to an order under the rules. R.S.O. 1970, c. 228, s. 69 (1-5).

Where  
notice  
returnable

(6) The notice is returnable before a judge of the High Court. R.S.O. 1970, c. 228, s. 69 (6); 1977, c. 51, s. 6.

Limitations

(7) The motion shall not be entertained unless,

(a) the return day thereof is within six months after the conviction, order, warrant or inquisition; and

(b) the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a provincial judge of the county in which the conviction, order or inquisition was made or the warrant was issued, or before a judge of the county court of that county or before a judge of the High Court, conditioned that the applicant will prosecute the application at his own costs and charges without any wilful or affected delay and that he will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the court in case the conviction, order or other proceeding is affirmed, or has paid into court the like sum as security that he will do so.

Recognizance  
to be filed

(8) The recognizance, with an affidavit of its due execution, shall be filed in the office of the Registrar of the Supreme Court.

Powers of  
judge

(9) The judge has all the powers of the court in the like matters and may order the production of such papers and documents as he considers necessary.

No appeal  
without  
leave

(10) No appeal from the order of the judge lies unless leave is granted by a judge of the High Court. R.S.O. 1970, c. 228, s. 69 (7-10).

**69.** Upon a motion to quash a conviction, it is the duty of the judge to examine and consider the proceedings returned to the court and, if such proceedings show that the person accused has been convicted of any offence known to the law and that there is any evidence to sustain the conviction, the conviction shall be affirmed, but otherwise the conviction shall be quashed, provided that if the evidence returned shows that the accused is guilty of an offence against the law, or that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence, the conviction shall be affirmed or amended as justice requires. R.S.O. 1970, c. 228, s. 70.

Review of  
proceedings  
on motion  
to quash  
conviction

#### REFERENCES TO REFEREES

**70.**—(1) Subject to the rules and to a right to have particular cases tried by a jury, a judge of the High Court may refer a question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties.

Reference  
for inquiry  
and report

(2) Subsection (1) does not, unless with the consent of the Crown, authorize the reference to an official referee of an action to which the Crown is a party or of a question or issue therein. R.S.O. 1970, c. 228, s. 71.

Where  
Crown  
interested

**71.** In an action,

Power to  
refer in  
certain  
cases

- (a) if all the parties interested who are not under disability consent, and, where there are parties under disability, the judge is of opinion that the reference should be made and the other parties interested consent; or
- (b) where a prolonged examination of documents or a scientific or local investigation is required that cannot, in the opinion of a court or a judge, conveniently be made before a jury or conducted by the court directly; or
- (c) where the question in dispute consists wholly or partly of matters of account,

a judge of the High Court may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. R.S.O. 1970, c. 228, s. 72.

Reference of  
boundary  
line question  
to surveyor

**72.**—(1) If it appears in any action that a material question to be determined is the true definition of a boundary line, the question may be referred to a special referee who is an Ontario land surveyor.

Proceedings  
R.S.O. 1980,  
c. 493

(2) The referee shall, by a proper survey as directed by the *Surveys Act*, and upon hearing the evidence adduced by the parties and their counsel, if any, define upon the ground by such posts and monuments as he considers sufficient the true boundary or division line so in dispute.

Report

(3) The referee shall make a report to the court and shall therein set forth his mode of procedure and what he has done in the premises, and also such further or other facts and circumstances as are necessary to enable the court finally to determine the question and how the costs should be borne. R.S.O. 1970, c. 228, s. 73.

Special  
referee,  
status

**73.**—(1) In the case of a reference to a special referee, he shall be deemed to be an officer of the Supreme Court.

remunera-  
tion

(2) The remuneration to be paid to a special referee may be determined by a judge of the High Court.

scale of  
remunera-  
tion

(3) The remuneration, fees, charges and disbursements payable to an official referee, and, in the absence of any special direction, to a special referee, shall be the same as are payable to a local master.

Where no  
fees  
payable

(4) Where the judge at the trial instead of trying an action refers the whole action under section 71 to an official referee who is a local registrar or deputy registrar, a local master or other officer of the court, paid wholly or partly by salary, no fees shall be charged by the referee. R.S.O. 1970, c. 228, s. 74.

Referee's  
report

**74.** The referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to the Court of Appeal, except that, where a whole action has been referred under section 71, the appeal from the report lies direct to the Court of Appeal. R.S.O. 1970, c. 228, s. 75.

Transmission  
of evidence  
and exhibits

**75.** The evidence of witnesses examined upon the reference and the exhibits shall forthwith after the making of the report be transmitted by the referee to the proper officer of the court. R.S.O. 1970, c. 228, s. 76.

## SURETY BONDS

**76.**—(1) In this section, “surety company” means a corporation empowered to give bonds by way of indemnity. Interpretation

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice. Bonds of company may be taken as security

(3) Every order in council made under subsection (2) shall be published forthwith in *The Ontario Gazette* and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session. Order in council to be published and tabled

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary. Other surety or affidavit of justification not required

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient. Disallowance of bond on motion  
R.S.O. 1970, c. 228, s. 77.

## PHYSICAL EXAMINATION OF PARTIES

**77.**—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination. Where examination may be ordered

(2) Any legally qualified medical practitioner may in connection with an examination under subsection (1) ask the person being examined any questions that may be relevant to the purpose of the examination. Examiners may ask questions

Admissibility  
of answers

(3) Any answer given or statement made by a person being examined during an examination under subsection (1) that is relevant to the purpose of the examination is admissible in evidence.

Presence  
of others

(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

Medical  
practitioner  
to be  
selected by  
judge and  
may be a  
witness

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs. R.S.O. 1970, c. 228, s. 78 (1-6).

Interpre-  
tation

(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under Part II of the *Health Disciplines Act*. R.S.O. 1970, c. 228, s. 78 (7); 1974, c. 47, s. 44 (3).

R.S.O. 1980,  
c. 196

#### TENDER OF AMENDS IN TORT ACTIONS

Tender of  
amends in  
tort cases

**78.** A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends, and the tender has the same effect as a tender in an action for the recovery of a debt. R.S.O. 1970, c. 228, s. 79.

#### VESTING ORDERS

Vesting  
orders,  
effect

**79.** Where the court has authority to direct the sale of any real or personal property or to order the execution of a deed, conveyance, transfer or assignment of any real or personal property, the court may by order vest the property in such person and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and the order has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the property is so ordered to be vested or, in the case of a chose in action, as if it had been actually assigned to the last-mentioned person. R.S.O. 1970, c. 228, s. 80.

## COSTS

**80.**—(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and to what extent the costs shall be paid. Determination of costs

(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund. Rights of trustees, etc., preserved

(3) Where an action or issue is tried by a jury, the costs shall follow the event, unless the judge before whom the action or issue is tried in his discretion otherwise orders. Where costs to follow the event

(4) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal. R.S.O. 1970, c. 228, s. 82 (1-4). In proceedings before judicial officers

(5) In any proceeding to which Her Majesty is a party, either as represented by the Attorney General for Ontario or otherwise, costs adjudged to Her Majesty shall not be disallowed or reduced upon taxation merely because the solicitor or the counsel who earned such costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing such services in the discharge of his duty and remunerated therefor by his salary, or for that or any other reason not entitled to recover any costs from the Crown in respect of the services so rendered, and the costs recovered by or on behalf of Her Majesty in any such case shall be paid into the Consolidated Revenue Fund. R.S.O. 1970, c. 228, s. 82 (5); 1972, c. 1, s. 9 (7). Crown costs

## PROCEDURE ON APPEALS

**81.** Subject as to appeals under Part VIII of the *Election Act* to that Act, and as to appeals and applications for new trials under the *Criminal Code* (Canada) to that Act, the practice and procedure upon appeals to the Court of Appeal shall be that provided by the rules. R.S.O. 1970, c. 228, s. 83. Practice and procedure on appeals  
R.S.O. 1980, c. 133  
R.S.C. 1970, c. C-34

## EXCLUSION OF PUBLIC

**82.** When the judge presiding at the hearing or trial of a cause or matter deems it to be in the interest of Excluding public from court

public decency and morals, he may order that the public be excluded from the court. R.S.O. 1970, c. 228, s. 84.

#### OFFICES AND OFFICERS

##### Officers of Supreme Court

**83.**—(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers, subject to section 104 as to special examiners, shall be appointed by the Lieutenant Governor in Council.

##### Duties

(2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers. R.S.O. 1970, c. 228, s. 85 (1, 2).

##### Oath of officers

**84.**—(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

I....., of.....solemnly swear that I will according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of.....without favour or affection, prejudice or partiality to any person. So help me God.

##### Administra- tion of oath

(2) The oath shall be administered by a judge in court.

##### Exception

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, and in every such case the judge shall forthwith transmit the oath to and it shall be filed in the office of the Registrar of the Supreme Court at Toronto. R.S.O. 1970, c. 228, s. 86.

##### Appointment of deputies by local registrars, etc.

**85.** With the approval of the Lieutenant Governor in Council, every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment. R.S.O. 1970, c. 228, s. 87.

##### Vacancy in office of local registrar, etc.

**86.**—(1) In the event of the death, suspension, resignation, retirement or removal of a local registrar, county court clerk or surrogate registrar, the deputy local registrar, deputy county court clerk or deputy surrogate registrar,

as the case may be, is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be.

(2) Where there is no deputy local registrar, deputy <sup>Idem</sup> county court clerk or deputy surrogate registrar, in the absence of or in the event of the death, suspension, resignation, retirement or removal of the local registrar, county court clerk or surrogate registrar, as the case may be, the Crown attorney for the county is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be. R.S.O. 1970, c. 228, s. 88.

**87.**—(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled, and the fees payable in respect of proceedings in his office are payable to the Crown. <sup>Officers paid by salary not to take fees</sup>

(2) Subsection (1) does not apply to the fees of, <sup>Exceptions</sup>

(a) a local registrar appointed before the 1st day of April, 1953, on an examination had before him as a special examiner or on a reference made to him as an official referee;

(b) a stenographic reporter for copies of shorthand notes of evidence, who is entitled to take the fees prescribed by order in council. R.S.O. 1970, c. 228, s. 89.

**88.**—(1) Every officer paid wholly or partly by fees, <sup>Return of fees</sup> whether commuted or not, shall on or before the 15th day of January in every year, transmit to the Inspector of Legal Offices a just, true and faithful account, verified by his oath, of the amount of fees paid or payable to him in respect of his office during the next preceding calendar year, and such other particulars with reference to the business of his office as the Inspector may require.

(2) The Lieutenant Governor in Council or the minister <sup>Form of return</sup> having charge of the matter may require the return to state any particulars, or to be made in any form that is

considered proper, and the return shall be made accordingly. R.S.O. 1970, c. 228, s. 90.

#### WHERE OFFICES TO BE KEPT

Certain  
officers to  
keep their  
offices at  
Osgoode Hall

**89.** The officers in Toronto, save the Official Guardian, special examiners, stenographic reporters and any official referee other than one holding that office *ex officio*, shall keep their offices at or adjacent to Osgoode Hall, in the City of Toronto. R.S.O. 1970, c. 228, s. 91.

Local  
master to  
keep office  
in court  
house

**90.** Unless otherwise directed by the Lieutenant Governor in Council, every local master shall keep his office in the court house of the county for which he is appointed. R.S.O. 1970, c. 228, s. 92.

Certain  
offices to  
be kept at  
court house

**91.** Every local registrar and every deputy registrar shall, if proper accommodation is afforded to him there, keep his office in the court house of the county for which he is appointed, and, until he can obtain such accommodation, he shall keep his office in some convenient place in the county town. R.S.O. 1970, c. 228, s. 93.

Holiday  
defined

**92.—**(1) In this section, "holiday" means,

(a) Saturday;

(b) Sunday;

(c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*. 1977, c. 51, s. 7.

R.S.O. 1980,  
c. 418

Office  
hours

(2) Except on holidays when they shall be closed, every local registrar's office and the offices of the Supreme Court in Toronto shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon. R.S.O. 1970, c. 228, s. 94 (2).

#### SECURITY FROM OFFICERS

Officers to  
give security  
if required

**93.—**(1) Every officer of the Supreme Court, if so required by the Lieutenant Governor in Council, shall give security to Her Majesty for the due performance of the duties of his office in such sum as the Lieutenant Governor in Council may direct.

Conse-  
quences of  
neglecting  
to do so

(2) The neglect to give such security renders the appointment of the officer void, but the forfeiture of office does not affect any act done by him while he continues to act. R.S.O. 1970, c. 228, s. 95.

## SEALS

**94.**—(1) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct and they shall be impressed on every writ and other document issued out of such offices, and every such writ and document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof.

Seals of  
local  
registrars  
and deputy  
registrars

(2) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used. R.S.O. 1970, c. 228, s. 96.

Seals to  
be used

## OFFICIAL REFEREES

**95.**—(1) Judges of county courts, masters, registrars, local masters, local registrars, and deputy registrars are official referees for the trial of such questions as are directed to be tried by an official referee. R.S.O. 1970, c. 228, s. 97 (1); 1975, c. 30, s. 3.

Official  
referees

(2) Where the business requires additional official referees, the Lieutenant Governor in Council may appoint them.

Additional  
referees

(3) Subject to subsection 73 (4), the fees on a reference or trial shall be paid in money. R.S.O. 1970, c. 228, s. 97 (2, 3).

Fees of  
referees

## MASTERS

**96.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such masters of the Supreme Court as are considered necessary.

Appointment  
of masters

(2) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

Removal  
for cause

(a) the circumstances respecting the misbehaviour or inability are first inquired into; and

(b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

## Inquiry

(3) For the purpose of making an inquiry under subsection (2), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,  
c. 411

Order for  
removal

(4) An order removing a master from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session. 1975, c. 30, s. 4, *part*.

## Retirement

**97.**—(1) Every master shall retire upon attaining the age of sixty-five years.

## Idem

(2) Notwithstanding subsection (1), a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

Reappoint-  
ment

(3) Upon attaining an age for retirement under subsection (1) or (2), a master may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.

## Resignation

(4) A master may at any time resign his office in writing, signed by him and delivered to the Attorney General. 1975, c. 30, s. 4, *part*.

Duties of  
Judicial  
Council  
for  
Provincial  
Judges

R.S.O. 1980,  
c. 398

**98.** The Judicial Council for Provincial Judges established under the *Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges. 1975, c. 30, s. 4, *part*.

## Senior Master

**99.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master.

Temporary  
appointments

(2) The Attorney General may designate masters to act in the place of the Senior Master for all purposes during his illness or absence.

## Duties

(3) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and arranging and assigning masters for hearings as circumstances require. 1975, c. 30, s. 4, *part*.

**100.**—(1) The Lieutenant Governor in Council may make regulations, <sup>Remuneration, etc.</sup>

- (a) fixing the remuneration of masters;
- (b) providing for the benefits to which masters are entitled, including,
  - (i) leave of absence and vacations,
  - (ii) sick leave credits and payments in respect of such credits,
  - (iii) pension benefits for masters and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under the *Public Service Act* or the *Public Service Superannuation Act* at the time of their appointment under this Act.

R.S.O. 1980,  
cc. 418, 419

(2) Subject to subsection (3), unless authorized by the Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a master. <sup>Other employment</sup>

(3) A master, with the previous consent of the Attorney General, may act as arbitrator or conciliator. <sup>Idem</sup>

(4) The *Public Authorities Protection Act* applies to masters in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to masters under the law in respect of acts done in the execution of their duties. 1975, c. 30, s. 4, *part*. <sup>Application of R.S.O. 1980, c. 406</sup>

**101.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such local masters as are considered necessary. <sup>Local masters</sup>

(2) Where a master or local master is not appointed in respect of a county, the county court judge is and shall perform the duties and exercise the powers of local master. <sup>Idem</sup>

(3) In the absence or inability to act of a local master appointed under subsection (1), the county court judge may perform the duties and exercise the powers of the local master. 1975, c. 30, s. 4, *part*. <sup>Idem</sup>

## LOCAL REGISTRARS, EX OFFICIO

Clerks of  
district  
courts to  
be local  
registrars

**102.** Unless another person is appointed, the clerk of the district court is *ex officio* local registrar for his district. R.S.O. 1970, c. 228, s. 100.

## STENOGRAPHIC REPORTERS

Stenographic  
reporters

**103.**—(1) The stenographic reporters are officers of the court to which they are appointed, and shall perform such other duties as are assigned to them by the Lieutenant Governor in Council or by the rules.

Reporter's  
oath

(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that court:

I,....., solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God.

R.S.O. 1970, c. 228, s. 101.

## SPECIAL EXAMINERS

*Ex officio*  
special  
examiners

**104.**—(1) Every local registrar, deputy registrar and clerk of the county court is *ex officio* a special examiner for the county for which he is appointed.

Additional  
special  
examiners

(2) The Lieutenant Governor in Council may appoint additional special examiners.

Number in  
Toronto

(3) There shall be at least four special examiners in Toronto.

Examinations  
to be taken  
in presence  
of special  
examiner

(4) Where an examination is taken by a stenographer or other person who is not a special examiner, it shall be taken in the presence of the special examiner.

Examinations  
not to be  
solicited

(5) A special examiner shall not solicit or make request from any suitor, solicitor, or other person, or offer any inducement to have a special examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

Appointment  
of special  
examiners.  
*pro tem.*

(6) Where it appears to the Lieutenant Governor in Council that a local registrar, a deputy registrar, or a clerk of a county court, elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieuten-

ant Governor in Council may appoint the stenographic reporter for the county court or some other person to act temporarily or otherwise as such special examiner in his stead.

(7) In case of the absence on leave or illness of any other special examiner he may, with the approval of the Chief Justice of Ontario, appoint a deputy to act for him during such absence or illness. R.S.O. 1970, c. 228, s. 102.

Appointment  
of deputy  
by special  
examiner

#### COMMUTATION OF FEES

**105.**—(1) The Lieutenant Governor in Council may commute the fees payable to an officer entitled to take fees to his own use for a fixed annual sum, not exceeding the average income derived from such fees during the next preceding five years.

Commutation  
of fees of  
certain  
officers

(2) An annual sum so fixed and any order in council for payment of any such annual sum may be rescinded, and the amount may be increased or diminished, but in no case shall it exceed the average income or fees, as the case may be, during the next preceding five years. R.S.O. 1970, c. 228, s. 103.

Amount of  
commutation  
may be  
changed

**106.**—(1) Every order in council determining a commutation allowance under this Act shall be laid before the Assembly forthwith, if the Assembly is then in session, and, if the Assembly is not then in session, within the first fifteen days after the opening of the next session.

Order in  
council as  
to commu-  
tations to be  
laid before  
Assembly

(2) If the Assembly at such session, or, if the session does not continue for three weeks after the order in council is laid before the Assembly, then at the next ensuing session, disapproves by resolution of such order in council, either wholly or so far as relates to any person named in it, the order in council, so far as so disapproved, has no effect from the time of the passing of the resolution. R.S.O. 1970, c. 228, s. 104.

Disapproval  
by Assembly

#### INSPECTOR OF LEGAL OFFICES

**107.**—(1) The Lieutenant Governor in Council may appoint an officer, to be called the Inspector of Legal Offices, to inspect the offices of the Supreme Court, of local courts, of Crown attorneys, and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct.

Inspector  
of Legal  
Offices

Assistant  
Inspector

(2) The Lieutenant Governor in Council may appoint a barrister or solicitor to be the Assistant Inspector of Legal Offices, and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act. R.S.O. 1970, c. 228, s. 105.

Duties of  
Inspector

**108.**—(1) In addition to any other duties assigned to him by any Act of the Legislature or by the Lieutenant Governor in Council, the Inspector shall,

- (a) make a personal inspection of the offices mentioned in subsection 107 (1) and of the books and court papers belonging to them;
- (b) see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times and in proper form and order, and that the court papers and documents are properly classified and preserved;
- (c) ascertain that the duties of the officers, other than masters, are duly and efficiently performed;
- (d) see that proper costs and charges only are allowed or exacted;
- (e) ascertain whether uniformity of practice prevails in the offices; and
- (f) report upon all such matters to the Lieutenant Governor. R.S.O. 1970, c. 228, s. 106 (1); 1975, c. 30, s. 5 (1).

Inquiries by  
Inspector

(2) Where the Inspector has occasion to inquire into the conduct of any officer, other than a master, in relation to his official duties or acts, he may require the officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases. R.S.O. 1970, c. 228, s. 106 (2); 1975, c. 30, s. 5 (2).

Books, etc.,  
to be  
produced for  
inspection

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by

them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires.

(4) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or district court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made, <sup>Destruction of documents</sup>

(a) in the Supreme Court by the Chief Justice of Ontario; and

(b) in the other courts, by the Chief Judge of the County and District Courts. R.S.O. 1970, c. 228, s. 106 (3, 4).

#### OFFICIAL GUARDIAN

**109.**—(1) No person shall be appointed Official Guardian unless he is a barrister and solicitor of Ontario of not less than ten years standing. <sup>Qualification of Official Guardian</sup>

(2) The Official Guardian shall be the guardian *ad litem* or next friend of minors and other persons in accordance with any Act or the rules or an order of a court or judge. <sup>Duties</sup>

(3) The same costs as are payable to counsel and solicitors are payable to the Official Guardian, but all costs paid to him shall be entered in his books of account or may be paid into court to the credit of an account entitled "Account of the Official Guardian". <sup>Costs</sup>

(4) Where an estate is small and the amount at the credit of the Account of the Official Guardian is adequate to pay his salary and the disbursements of his office, the court may direct that no costs be paid to him out of the estate. <sup>Dispensing with payment of costs out of small estates</sup>

(5) There shall be paid to the Official Guardian for all business done and all costs in respect of it over and above all disbursements, a fixed annual salary of such sum as, in view of the amount of the business done or to be done by him and the sum at the credit of the account, the finance committee considers reasonable and the Lieutenant Governor in Council approves. <sup>Remuneration</sup>

(6) The salary and disbursements shall be paid monthly out of the moneys that are appropriated by the Legis- <sup>Salary and disbursements</sup>

lature for that purpose and the Lieutenant Governor in Council may provide for the payment out of the moneys at the credit of the account into the Consolidated Revenue Fund of amounts equal to such salary and disbursements.

Idem (7) Out of the surplus at the credit of the account shall be transferred to the Sutors Fee Fund Account such amount as the finance committee may direct.

Deficiency (8) If in any year the amount at the credit of the account is insufficient to pay the salary and disbursements, the deficiency shall be paid out of such reserve funds as the finance committee may direct.

Deputy or deputies (9) The Lieutenant Governor in Council may appoint one or two persons to act as the deputy or the deputies, as the case may be, of the Official Guardian during his absence or illness, and while so acting each such deputy has all the powers and may perform any of the duties of the Official Guardian. R.S.O. 1970, c. 228, s. 107 (1-9).

When Attorney General to act (10) If the office of Official Guardian becomes vacant, the Attorney General is *ex officio* Official Guardian until another appointment is made. R.S.O. 1970, c. 228, s. 107 (10); 1972, c. 1, s. 9 (7).

Agents (11) The Official Guardian may retain solicitors out of Toronto as agents for the purpose of any proceeding being carried on out of Toronto, and a solicitor so retained is entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the Official Guardian and the agent's fees and disbursements shall be paid by the Official Guardian and shall be deemed a disbursement of the Official Guardian.

Audit (12) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian.

Official Guardian not to practise law, etc. (13) If the Lieutenant Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter of conveyancing or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this Act.

Penalty (14) For every contravention of subsection (13), the Official Guardian shall incur a penalty of \$400.

(15) Unless otherwise ordered by the court or a judge, the Official Guardian shall not be required to give security for the cost of any proceeding. Official Guardian not to give security for costs

(16) When a new Official Guardian is appointed, he *ipso facto* becomes and is by virtue of his appointment guardian *ad litem* of all minors in the place and stead of his predecessor with the same rights, duties and powers, and the latter or his executors or administrators shall forthwith deliver to the new Official Guardian all letters, papers, documents and books in his or their possession or power relating to matters in which such predecessor acted as official or other guardian *ad litem* of minors, and the new Official Guardian shall forthwith notify all persons concerned of his appointment. R.S.O. 1970, c. 228, s. 107 (11-16). New Official Guardian

#### ACCOUNTANT

**110.**—(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation sole has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts. Accountant a corporation sole

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act. Money, mortgages, etc., to be vested in Accountant

(3) Where there is a vacancy in the office of Accountant, such officer or person as is directed by the rules to perform the duties of the office shall be deemed to be and have all the powers of the Accountant. Where there is no Accountant

(4) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court into the Consolidated Revenue Fund of amounts equal to such expenses, and such amounts are the first charge on the income from the funds in court. R.S.O. 1970, c. 228, s. 108. Expenses of Accountant's office

#### INVESTMENT OF COURT FUNDS

**111.**—(1) The finance committee shall continue to be composed of three persons who shall be appointed by and Finance committee

hold office during the pleasure of the Lieutenant Governor in Council, and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money.

Interest

(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid.

Reserve funds

(3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.

Investment of court funds

(4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 109 (1-4).

Investment of money

(5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Economics may invest public money under section 3 of the *Financial Administration Act*. R.S.O. 1970, c. 228, s. 109 (5); 1972, c. 3, s. 17 (1); 1975 (2nd Sess.), c. 1, s. 1.

R.S.O. 1980, c. 161

Debentures invested in not open question

(6) Where an investment in debentures of a municipal corporation is made, the validity of the debentures is not thereafter open to question but they shall be deemed to be valid.

Trust company may be employed

(7) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed.

Investment of court funds

(8) When an amount exceeding \$50,000 is in court to the credit of an account for investment, the Accountant may, if so directed by the finance committee, notwithstanding any order for payment out of court, withhold payment for three months to enable him to realize upon the securities in which money in court is invested. R.S.O. 1970, c. 228, s. 109 (6-8).

Money, etc., vested in Accountant, Guardian, etc., to be deemed to be held in trust for Crown

**112.** All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for Her Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment,

or order of court, or order of the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 110.

**113.** Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul. R.S.O. 1970, c. 228, s. 111.

Payment of moneys to which foreigners are entitled

**114.** The Suitors Fee Fund Account shall be kept and managed by the finance committee, and the Court of Appeal or any judge of the Supreme Court may with the approval of the finance committee apply so much of the money at the credit of the account as may be necessary for the protection of any minor or other person not *sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the court, or may be ordered to be had in another court, and the finance committee may also, from time to time, order to be paid out of the money at the credit of the account any sum required to make good a default in respect of any suitor's money or securities from any mistake, act or omission of any officer of the court, but such payment does not prejudice the right to require the officer or his sureties to make good the loss occasioned by the mistake, act or omission. R.S.O. 1970, c. 228, s. 112.

Suitors Fee Fund

**115.** The Provincial Auditor shall examine and report upon the accounts and financial transactions of The Accountant of the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 113.

Audit

#### RULES

**116.—**(1) The Rules Committee shall continue to be composed of,

Rules Committee

- (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;
- (b) the Chief Judge of the County and District Courts;
- (c) two county or district court judges who shall be appointed by the Attorney General;
- (d) the Attorney General or such law officer of the Crown as he may from time to time appoint;

(e) the Senior Master;

(f) the Registrar of the Supreme Court;

(g) three barristers or solicitors who shall be appointed by the Benchers of the Law Society of Upper Canada in convocation; and

(h) such other barristers or solicitors, not exceeding three at any one time, as may be appointed by the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 114 (1); 1972, c. 1, s. 9 (7); 1975, c. 30, s. 6 (1); 1979, c. 65, s. 6 (1, 2).

**Chairman**

(2) The Chief Justice of Ontario is the chairman of the Rules Committee, but, in his absence or at his request, the Chief Justice of the High Court shall preside. R.S.O. 1970, c. 228, s. 114 (2).

**Idem**

(3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment. 1979, c. 65, s. 6 (3).

**Tenure  
of office**

(4) Each of the members of the Rules Committee appointed under clause (1) (a), (c) or (g) shall hold office for a period of three years and is eligible for a reappointment.

**Idem**

(5) Each of the members of the Rules Committee appointed under clause (1) (h) shall hold office for a period of one year and is eligible for reappointment. R.S.O. 1970, c. 228, s. 114 (4, 5).

**Vacancy  
in office**

(6) In case of the resignation, death or inability to act of any member appointed under clause (1) (a), (c), (g) or (h), the Chief Justice of Ontario, Attorney General or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act. R.S.O. 1970, c. 228, s. 114 (6); 1972, c. 1, s. 9 (7).

**Quorum**

(7) A majority of the members of the Rules Committee constitutes a quorum.

**Annual  
meeting**

(8) The Rules Committee shall hold an annual meeting on the first Monday following Christmas Day that is not a holiday at the City of Toronto or at such other time and place as the chairman may direct.

(9) The chairman may at any time and upon the written request of any three members shall direct the secretary to call a meeting of the Rules Committee at such time and place as he may determine. R.S.O. 1970, c. 228, s. 114 (7-9). <sup>Other meetings</sup>

(10) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for, <sup>Power to make rules</sup>

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (c) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;
- (d) allowing service out of Ontario;
- (e) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;
- (f) prescribing the time and manner for making an appeal to the Divisional Court;
- (g) fixing the vacations;
- (h) empowering the masters or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for *ex parte* injunctions and upon motions or as are specified in the rules except in respect of matters relating to,
  - (i) the liberty of the subject,
  - (ii) appeals and applications in the nature of appeals,
  - (iii) proceedings under the *Mental Incompetency Act*, <sup>R.S.O. 1980, c. 264</sup>

R.S.O. 1980,  
c. 512

(iv) applications for advice under the *Trustee Act*,

(v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance,

(vi) proceedings enabling minors to make binding settlements of their real and personal property on marriage;

(i) prescribing motions that need not be heard in open court;

(j) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts. R.S.O. 1970, c. 228, s. 114 (10); 1971, c. 57, s. 4; 1975, c. 30, s. 6 (2); 1977, c. 51, s. 8; 1979, c. 65, s. 6 (5, 6).

Power to  
modify  
statutory  
provisions  
as to  
procedure

(11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded.

Provisions  
as to  
payment into  
or out of  
court of  
money, etc.

(12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. R.S.O. 1970, c. 228, s. 114 (11, 12).

Motions in  
open court

**117.** Notwithstanding the provisions of this or any other Act or regulation, all motions and applications shall be heard in open court, except as provided by the rules. 1977, c. 51, s. 9.

#### COUNCIL OF JUDGES

Council of  
judges

**118.**—(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and

of enquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority. R.S.O. 1970, c. 228, s. 115 (1).

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice. R.S.O. 1970, c. 228, s. 115 (2); 1977, c. 51, s. 10. Council to report to Attorney General

(3) An extraordinary council for the purposes mentioned in subsection (1) may also be convened at any time by the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 115 (3). Extraordinary councils

#### DELEGATION OF POWERS OF JUDGES

**119.**—(1) Where by this or any other Act any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed. Delegation of powers of judges

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business. R.S.O. 1970, c. 228, s. 116 (1, 2). Quorum

#### QUORUM OF MEETINGS OF JUDGES

**120.** Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present. R.S.O. 1970, c. 228, s. 117. Quorum of meetings of judges

#### LOCAL JUDGES OF THE HIGH COURT

**121.**—(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court, and may be styled a local judge of the Supreme Court, and has, in all causes County court judges are local judges

and actions in the Supreme Court, subject to the rules, power and authority to do and perform all such acts and transact all such business in respect of matters and causes in or before the High Court as he is by statute or the rules empowered to do and perform.

Powers of  
county  
judge  
outside  
county

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the like power as a local judge of the High Court as though he were a judge of the county court of such county. R.S.O. 1970, c. 228, s. 118 (1,2).

Jurisdiction  
of local  
judges in  
divorce  
actions

R.S.C. 1970,  
c. D-8

(3) Without limiting the generality of subsections (1) and (2), the jurisdiction of the local judges of the High Court extends to the exercising of all such powers and authorities and the performing of such acts and the transacting of all such business as may be exercised, performed or transacted by the Supreme Court or a judge thereof under the *Divorce Act* (Canada) and, where a claim for other relief is joined in a petition for divorce, the local judges of the High Court have the same jurisdiction and authorities to deal with such claim as may be exercised by the Supreme Court or a judge thereof. R.S.O. 1970, c. 228, s. 118 (3); 1975, c. 30, s. 7; 1978, c. 2, s. 81 (3).

#### SHERIFFS, ETC.

Sheriffs,  
jailers, etc.,  
to obey  
orders of  
the court

**122.** Sheriffs, deputy sheriffs, jailers, constables and other peace officers, shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by the order of the court or of a judge required so to do. R.S.O. 1970, c. 228, s. 119.

#### PRISONS OF THE COURT

Correctional  
institutions  
to be  
prisons of  
the court

**123.** All correctional institutions in Ontario are prisons of the court. R.S.O. 1970, c. 228, s. 120.

#### OATHS AND AFFIDAVITS

Administra-  
tion of oaths

**124.** Every officer of the Supreme Court has, for the purposes of any proceeding before him, power to administer oaths and to examine parties and witnesses. R.S.O. 1970, c. 228, s. 121.

#### WITNESS FEES

Fees of  
certain  
officers  
producing  
documents

**125.** A public official or other witness subpoenaed or called upon to produce before any court or other tribunal any public or other document is not entitled to more

than ordinary witness fees, unless the court or other tribunal otherwise orders. R.S.O. 1970, c. 228, s. 122.

#### PROVISIONS APPLICABLE TO COUNTY COURTS

**126.** In addition to the provisions of this Act that are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 27, 34, 36, 38, 54 to 56, 62 to 66, 78, 79, 80, 117, 122 and 123, with necessary modifications apply to the county courts. R.S.O. 1970, c. 228, s. 123; 1977, c. 51, s. 12.

Certain sections apply to county courts

#### COMMISSIONS FOR HOLDING SITTINGS, ETC.

**127.** This Act does not affect the power to issue commissions for the discharge of civil or criminal business on circuit or otherwise. R.S.O. 1970, c. 228, s. 124.

Power to issue commissions not to be affected

**128.** Any judge presiding at any sittings of the court shall be deemed to constitute the court. R.S.O. 1970, c. 228, s. 125; 1977, c. 51, s. 13.

Judge to constitute court

#### ACCESS TO BOOKS

**129.—**(1) Every person shall have access to and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued and judgments entered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which the access or inspection is sought.

Books in which writs, judgments, etc., are entered to be open to inspection

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, of which records or entries are by law required to be kept in such book.

Production of writs of summons, etc.

(3) The fee payable in respect of such inspection is 25 cents for a general search, and 10 cents for each writ of summons or judgment roll inspected, and 10 cents per folio is also payable for all extracts, whether made by the person making the search or by the officer.

Fee

(4) A person affected by any record in any court, whether it concerns the Queen or other person, is entitled, upon payment of the proper fee, to search and examine it and to have an exemplification or a certified copy thereof made and delivered to him by the proper officer. R.S.O. 1970, c. 228, s. 126.

Persons entitled to search and to copies of records of courts

## LANGUAGE

Writs,  
pleadings, and  
proceedings

**130.**—(1) Subject to subsections (2) to (9), writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as has been commonly used. R.S.O. 1970, c. 228, s. 127; 1978, c. 26, s. 1 (1).

Designated  
counties  
and  
districts

(2) The Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection (3) are designated counties and districts for the purposes of this section.

Designation  
of courts  
and  
additional  
counties and  
districts

(3) The Lieutenant Governor in Council may designate,

(a) counties and districts in addition to those named in subsection (2); and

(b) courts in a designated county or district,

for the purposes of this section.

Bilingual  
trier of fact

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

Time of  
application

(5) Except by leave of the court, an application under subsection (4) shall be made,

(a) where the proceeding is in the Supreme Court or a county or district court, before the giving of a jury notice or, if none, before the proceeding is set down for trial;

(b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

Hearing  
in French  
language

(6) Where an application is made under subsection (4) and in addition to a direction made thereunder, the court may direct,

- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and
  - (b) that subsection (7) apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.
- (7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes. Evidence recorded in French
- (8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language. Pleadings in French
- (9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use. 1978, c. 26, s. 1 (2). Bilingual forms

#### DEMISE OF CROWN

**131.** No action or other proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but it shall be proceeded with as if such demise had not happened. R.S.O. 1970, c. 228, s. 128. Demise of Crown not to affect pending proceedings

#### SERVICE OF PROCESS ON THE LORD'S DAY

**132.** No person upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order or judgment, except in cases of treason, felony, or breach of the peace, and the service of every such writ, process, warrant, order or judgment on the Lord's Day is void, and the person so serving or executing it is as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he had done the same without any writ, process, warrant, order or judgment. R.S.O. 1970, c. 228, s. 129. Service of process on the Lord's Day

#### ACTIONS ON BONDS

**133.—(1)** In an action commenced or prosecuted in any court upon a bond for non-performance of any covenant In actions on bonds, etc., plaintiff may assign as many breaches as he pleases

or agreement in any indenture, deed or writing, the plaintiff may assign as many breaches as he thinks fit, and, upon trial of such action, not only such damages and costs as have heretofore been usually assessed shall be assessed, but also damages for such of the breaches so assigned as the plaintiff upon the trial of the issues proves, and the like judgment shall be entered as heretofore in such action.

Default  
judgment

(2) If judgment is given for the plaintiff by confession or default, he may suggest as many breaches of the covenants and agreements as he thinks fit, and the damages that he has sustained thereby shall be assessed, and, if the defendant after such judgment entered and before any execution executed, pays into the court in which the action is brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants or agreements, together with the costs of suit, a stay of execution on the judgment shall be entered upon record.

Judgment  
to remain to  
answer any  
further  
breach

(3) If by reason of any execution executed the plaintiff or his executors or administrators are fully paid or satisfied, all such damages so to be assessed, together with his or their costs of suit and all reasonable charges and expenses for executing the execution the body, land or goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but such judgment shall, nevertheless, remain, continue and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or agreement in the same indenture, deed or writing contained upon which the plaintiff may apply to the court in which judgment is entered for leave to issue execution upon the judgment against the defendant, or his executors or administrators, suggesting other breaches of the covenants or agreements, and to call upon him or them to show cause why execution shall not be awarded upon the judgment, upon which the court shall make such order as is considered just.

Stay of  
proceedings

(4) Upon payment or satisfaction of such future damages, costs and charges, all further proceedings on the judgment shall again be stayed as often as occasion arises, and the defendant, his body, land or goods shall be discharged out of execution. R.S.O. 1970, c. 228, s. 130.

## SET OFF

**134.** Where there are mutual debts between the plaintiff and defendant or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other. R.S.O. 1970, c. 228, s. 131.

**135.**—(1) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.

(2) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other. R.S.O. 1970, c. 228, s. 132.

**136.** If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him. R.S.O. 1970, c. 228, s. 133.

## PAYMENT POST DIEM

**137.** Where an action is brought upon a bill or where an action is brought upon a judgment, if the defendant has paid the money due upon the bill or judgment the payment may be pleaded in the action, and where an action is brought upon a bond that has a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the condition or defeazance of the bond, though the payment was not made strictly according to the condition or defeazance, yet it may nevertheless be pleaded in the action, and is as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance and had been so pleaded. R.S.O. 1970, c. 228, s. 134.

Principal,  
interest,  
and costs  
brought  
into court  
pending  
action upon  
bond

**138.** If, at any time pending an action upon a bond with a penalty, the defendant brings into court all the principal money and interest due on the bond and also all such costs as have been expended in any suit upon the bond, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of the bond, and the court may give judgment to discharge the defendant of and from the bond accordingly. R.S.O. 1970, c. 228, s. 135.

#### ACTIONS OF ACCOUNT

Actions of  
account by  
and between  
joint tenants  
as bailiffs,  
etc.

**139.** Actions of account may be brought and maintained against the executors or administrators of a guardian, bailiff or receiver, and also by one joint tenant or tenant in common, his executors or administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint tenant or tenant in common. R.S.O. 1970, c. 228, s. 136.

#### PERPETUATING TESTIMONY

Actions to  
perpetuate  
testimony

**140.** Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of the event, is entitled to maintain an action in the Supreme Court to perpetuate any testimony that may be material for establishing his claim or right, and all laws, rules and regulations, not contrary to this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, are in force and shall be used and applied in all actions instituted under this section and in respect of depositions taken in the action. R.S.O. 1970, c. 228, s. 137.

Attorney  
General may  
be party  
defendant in  
actions in  
which the  
Crown may  
have any  
estate or  
interest

**141.** In all actions instituted under section 140 touching any office or any other matter or thing in which the Crown may have any estate or interest, it is lawful to make the Attorney General a party defendant thereto, and in all proceedings in which the depositions taken in any such action in which the Attorney General was so made a defendant may be offered in evidence, the depositions may be admissible notwithstanding any objection to the depositions upon the ground that the Crown was not a party to the action in which the depositions were taken. R.S.O. 1970, c. 228, s. 138; 1972, c. 1, s. 9 (7).

## INDEMNITY TO PERSONS ACTING UNDER JUDGMENT

**142.** Any order or judgment of the court made in an action or upon an originating motion, special case or in any other way permitted by the rules or any statute effectually protects and indemnifies any person acting thereon in good faith. R.S.O. 1970, c. 228, s. 139.

Protection  
of persons  
acting on  
order or  
judgment

## CONTEMPT

**143.**—(1) Where a person has been directed by a judgment or order to execute a deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute the deed or instrument, or make the surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt and remains in prison, the court may grant a vesting order or may order or appoint an officer of the court to execute the deed or other instrument or to make the surrender or transfer for and in the name of such person.

Court may  
appoint  
person to  
execute  
instrument  
for person  
in contempt

(2) The execution of such deed or other instrument, or the surrender or transfer in his name made by such officer, has in all respects the same force and validity as if it had been executed or made by the person himself.

Effect of  
instrument

(3) Thereupon the person in contempt shall be considered as having cleared his contempt, except as regards the payment of the costs of the contempt, and is entitled to an order that he be discharged from custody, and the court shall make such order as is considered just touching the payment of the cost of or concerning the deed or other instrument, surrender or transfer. R.S.O. 1970, c. 228, s. 140.

Discharge  
of person in  
contempt

**144.**—(1) Where a person is committed for a contempt in not delivering to any person, or depositing in court or elsewhere, as by an order may be directed, books, papers, or any other articles or things, any sequestrator appointed under any commission of sequestration has the same power to seize and take the books, papers, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property, and thereupon the books, papers, or other articles or things so seized and taken shall be dealt with as the court considers proper.

Power of  
sequestrator  
in cases of  
contempt

Power of  
court to  
discharge

(2) After such seizure the court may, upon the application of the prisoner or of any other person in the cause or matter, or upon any report, make such order for the discharge of the prisoner upon such terms as to costs and otherwise as the court considers proper. R.S.O. 1970, c. 228, s. 141.

Court may  
compulsorily  
discharge  
prisoners  
confined for  
contempt

**145.** Where a person committed for a contempt is entitled to his discharge upon applying to the court but omits to make the application, the court may compulsorily discharge the person from custody and direct payment of the costs of the contempt out of any funds belonging to him over which the court has power, or may order payment of the costs by the person. R.S.O. 1970, c. 228, s. 142.

#### CHARGING ORDERS ON STOCKS, ETC.

Orders  
charging  
stocks, etc.

**146.**—(1) If a person against whom a judgment has been entered in any of Her Majesty's courts in Ontario has any government stock, funds or annuities, or any stock or shares of or in a public company in Ontario, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Supreme Court, on the application of any judgment creditor, may order that the stock, funds, annuities, or shares of such of them or such part thereof as he thinks fit shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and the order entitles the judgment creditor to all such remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor; but no proceedings shall be taken to have the benefit of the charge until after the expiration of six months from the date of the order.

Order to be  
made in the  
first instance  
*ex parte*

(2) Every such order shall be made in the first instance *ex parte* and without any notice to the judgment debtor and is an order to show cause only, and the order, if any government stock, funds or annuities standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected, restrains any transfer thereof being made in the meantime and until the order has been made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected by the order, in like manner restrains such public company from permitting a transfer thereof.

(3) If, after notice of such order to the person to be restrained thereby, or, in the case of a corporation, to any authorized agent of the corporation, and before the order is discharged or made absolute, the corporation or person permits any such transfer to be made, the corporation or person so permitting the transfer is liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as is sufficient to satisfy his judgment, and no disposition of the judgment debtor in the meantime is valid or effectual as against the judgment creditor.

Liability  
of persons  
disregarding  
order

(4) Unless the judgment debtor, within a time to be mentioned in such order, shows to a judge sufficient cause to the contrary, the order shall, after proof of notice thereof to the judgment debtor, his solicitor or agent, be made absolute.

When order  
absolute

(5) A judge, upon the application of the judgment debtor or any person interested, may discharge or vary such order.

Varying or  
discharging  
orders

(6) This section extends to the interest of a judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stock, funds, annuities or shares, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares.

Property of  
judgment  
debtors  
defined and  
extended

(7) Where such a judgment debtor has an estate, right, title or interest, vested or contingent, in possession, remainder, or reversion in or to stock, funds, annuities or shares standing in the name of The Accountant of the Supreme Court or in or to the dividends, interest or annual produce thereof, the judge may make any order as to the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of the judgment debtor.

Order  
affecting  
funds in  
court

(8) No such order as to any stock, funds, annuities or shares standing in the name of the Accountant, or as to the interest, dividends or annual produce thereof, prevents any incorporated bank or any public company from permitting a transfer of the stock, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Supreme Court directs, or has any greater effect than if the judgment debtor had charged the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in favour of the

Effect of  
order

judgment creditor with the amount of the sum mentioned in the order. R.S.O. 1970, c. 228, s. 143.

#### PENAL ACTIONS

Reply in  
penal  
actions

**147.**—(1) In a penal action brought in good faith in which the defendant sets up a prior judgment, the plaintiff may reply in avoidance of the prior judgment that the prior judgment was had by covin or collusion, and no release by any person before or after action for a penalty is a ground for staying the action.

Exception

(2) No plaintiff in such an action shall be permitted to set up by way of reply, or otherwise, a charge of covin or collusion, where the merits of the matter in question in the action or a like charge of covin or collusion have been once tried and found either for or against the plaintiff. R.S.O. 1970, c. 228, s. 144.

Informer  
must be  
*sui juris*

**148.** No person shall sue as a common informer in a penal action unless he is *sui juris*. R.S.O. 1970, c. 228, s. 145.

Compounding  
penal action

**149.** No penal action brought by a common informer shall be compounded without the leave of the court. R.S.O. 1970, c. 228, s. 146.

#### QUO WARRANTO PROCEEDINGS

*Quo*  
*warranto*  
writ  
superseded,  
in certain  
cases

**150.**—(1) Except in the cases mentioned in section 151, all proceedings against any person who unlawfully claims or usurps, or is alleged unlawfully to claim or to usurp any office, franchise or liberty, or who has forfeited or is alleged to have forfeited any franchise by reason of non-user or mis-user thereof, that were formerly instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, shall be instituted and taken, where the proceeding is by the Attorney General *ex officio*, by notice of motion calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises or usurps such office, franchise or liberty. R.S.O. 1970, c. 228, s. 147 (1); 1972, c. 1, s. 9 (7).

Where  
relator  
named,  
proceeding,  
how framed

(2) Where the proceeding is at the instance of a relator, it shall be taken in the name of Her Majesty on the relation of such person, and such person shall before serving the notice of motion give security for the due and effectual prosecution thereof in like manner as nearly as may be and in the like amount as is, according to the practice of the Supreme Court, required to be given on an appli-

cation to quash a conviction or order made by a justice of the peace, or in such manner and amount as the court may direct.

(3) The court may direct an issue for the trial of the matters in question on any such application, and may grant an injunction or a mandatory order in aid of the proceedings, or for the purpose of enforcing the judgment or order that is pronounced thereon.

Issue may be directed or injunction, etc., granted

(4) The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the Supreme Court. R.S.O. 1970, c. 228, s. 147 (2-4).

Practice and appeals

**151.**—(1) Where it is intended to call in question the right of any person claiming to be a municipal officer, or an officer of a school corporation, to the office that he claims to hold, exercise or occupy as such officer, or the right of a member of any school board or school corporation to have, hold or enjoy any office, either as a member of such board or corporation or otherwise under the school laws of Ontario, and subsection (2) does not apply to the trial and determination of such question, the matter shall be tried and determined by the judge of the county court of the county in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, except that such judge has the same power to award costs to either party to the proceedings as he would have if the same were a proceeding in the county court.

Municipal and school officers

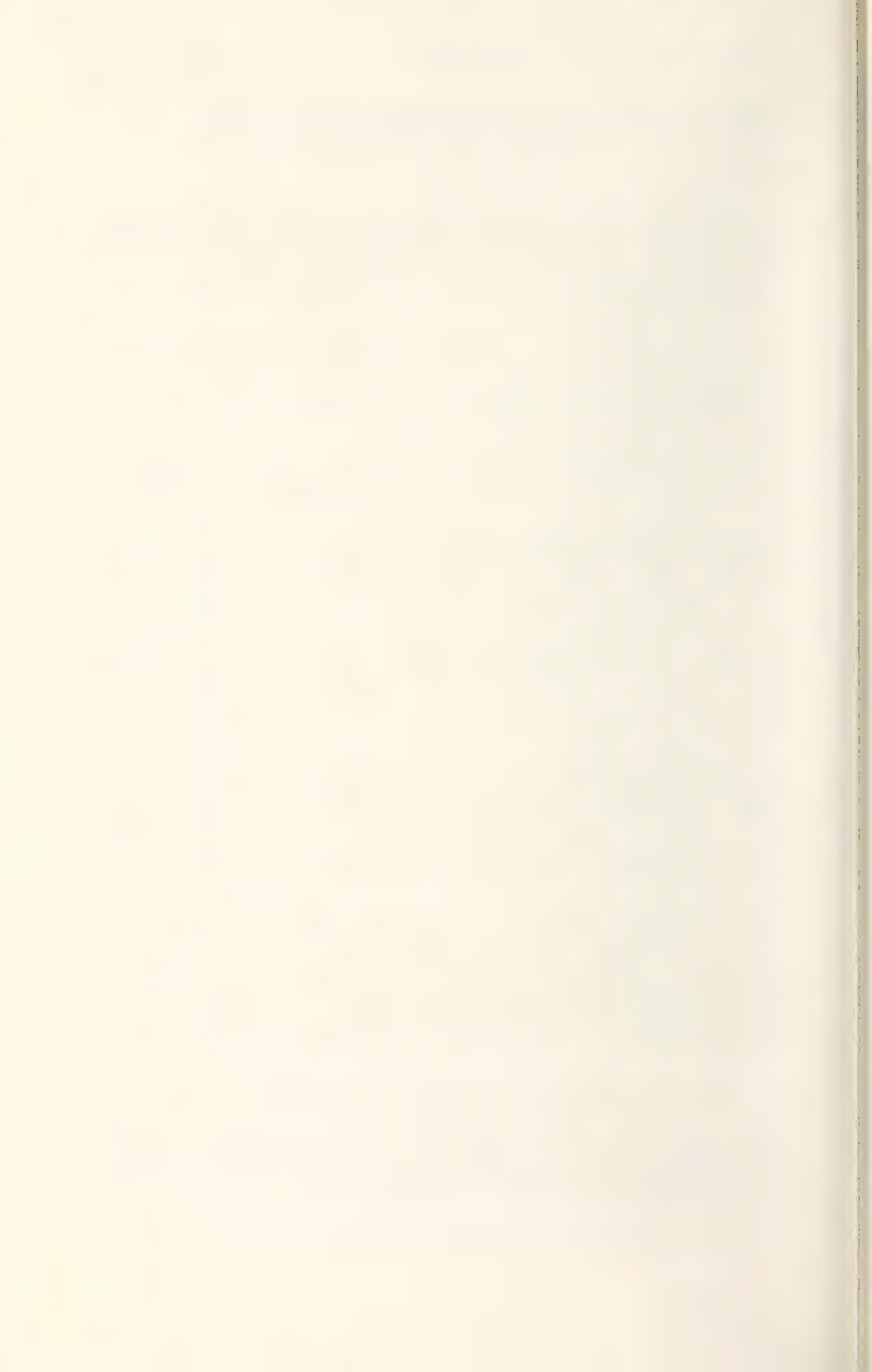
(2) Nothing in subsection (1) applies to or affects the proceedings in cases for which special provision is made by the municipal or school laws of Ontario, but in all such cases the proceedings shall be instituted and taken in the manner provided by those Acts, and not otherwise. R.S.O. 1970, c. 228, s. 148.

Where other special statutory provision, subs. (1), not to apply

#### CERTAIN PRACTICE AND PROCEDURE NOT AFFECTED

**152.** Nothing in this Act affects the practice or procedure in criminal matters or matters connected with Dominion controverted elections. R.S.O. 1970, c. 228, s. 149.

Criminal matters and Dominion controverted elections not affected



## CHAPTER 224

## Judicial Review Procedure Act

## 1. In this Act,

Interpre-  
tation

- (a) "application for judicial review" means an application under subsection 2 (1);
- (b) "court" means the Supreme Court;
- (c) "licence" includes any permit, certificate, approval, registration or similar form of permission required by law;
- (d) "municipality" has the same meaning as in the *Municipal Affairs Act*, and includes a district, metropolitan and regional municipality and their local boards; R.S.O. 1980, c. 303
- (e) "party" includes a municipality, association of employers, a trade union or council of trade unions which may be a party to any of the proceedings mentioned in subsection 2 (1);
- (f) "statutory power of decision" means a power or right conferred by or under a statute to make a decision deciding or prescribing,
  - (i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
  - (ii) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether he is legally entitled thereto or not,and includes the powers of an inferior court;
- (g) "statutory power" means a power or right conferred by or under a statute,
  - (i) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation,

- (ii) to exercise a statutory power of decision,
- (iii) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,
- (iv) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party. 1971, c. 48, s. 1; 1972, c. 1, s. 104 (6).

Applications  
for  
judicial  
review

**2.—**(1) On an application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the court may, notwithstanding any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

Error of  
law

(2) The power of the court to set aside a decision for error of law on the face of the record on an application for an order in the nature of certiorari is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision.

Lack of  
evidence

(3) Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on evidence admissible before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review.

Power to  
set aside

(4) Where the applicant on an application for judicial review is entitled to a judgment declaring that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may, in the place of such declaration, set aside the decision.

(5) Where, in any of the proceedings enumerated in subsection (1), the court had before the 17th day of April, 1972 a discretion to refuse to grant relief on any grounds, the court has a like discretion on like grounds to refuse to grant any relief on an application for judicial review. Power to refuse relief

(6) Subsection (5) does not apply to the discretion of the court before the 17th day of April, 1972 to refuse to grant relief in any of the proceedings enumerated in subsection (1) on the ground that the relief should have been sought in other proceedings enumerated in subsection (1). 1971, c. 48, s. 2. Where subs. (5) does not apply

**3.** On an application for judicial review in relation to a statutory power of decision, where the sole ground for relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, the court may refuse relief and, where the decision has already been made, may make an order validating the decision, notwithstanding such defect, to have effect from such time and on such terms as the court considers proper. 1971, c. 48, s. 3. Defects in form, technical irregularities

**4.** On an application for judicial review, the court may make such interim order as it considers proper pending the final determination of the application. 1971, c. 48, s. 4. Interim order

**5.** Notwithstanding any limitation of time for the bringing of an application for judicial review fixed by or under any Act, the court may extend the time for making the application, either before or after expiration of the time so limited, on such terms as it considers proper, where it is satisfied that there are *prima facie* grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay. 1971, c. 48, s. 5. Extension of time for bringing application

**6.—(1)** Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. Application to Divisional Court

(2) An application for judicial review may be made to the High Court with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. Application to judge of High Court

(3) Where a judge refuses leave for an application under subsection (2), he may order that the application be transferred to the Divisional Court. 1971, c. 48, s. 6 (1-3). Transfer to Divisional Court

Appeal to  
Court of  
Appeal

(4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the High Court disposing of an application for judicial review pursuant to leave granted under subsection (2). 1976, c. 45, s. 1.

Summary  
disposition  
of  
mandamus,  
etc.

7. An application for an order in the nature of mandamus, prohibition or certiorari shall be deemed to be an application for judicial review and shall be made, treated and disposed of as if it were an application for judicial review. 1971, c. 48, s. 7.

Summary  
disposition  
of actions

8. Where an action for a declaration or injunction, or both, whether with or without a claim for other relief, is brought and the exercise, refusal to exercise or proposed or purported exercise of a statutory power is an issue in the action, a judge of the High Court may on the application of any party to the action, if he considers it appropriate, direct that the action be treated and disposed of summarily, in so far as it relates to the exercise, refusal to exercise or proposed or purported exercise of such power, as if it were an application for judicial review and may order that the hearing on such issue be transferred to the Divisional Court or may grant leave for it to be disposed of in accordance with subsection 6 (2). 1971, c. 48, s. 8.

Sufficiency  
of  
application

9.—(1) It is sufficient in an application for judicial review if an applicant sets out in the notice the grounds upon which he is seeking relief and the nature of the relief that he seeks without specifying the proceedings enumerated in subsection 2 (1) in which the claim would have been made before the 17th day of April, 1972.

Exerciser  
of power  
may be  
a party

(2) For the purposes of an application for judicial review in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power may be a party to the application.

Idem

(3) For the purposes of subsection (2), any two or more persons who, acting together, may exercise a statutory power, whether styled a board or commission or by any other collective title, shall be deemed to be a person under such collective title. 1971, c. 48, s. 9 (1-3).

Notice to  
Attorney  
General

(4) Notice of an application for judicial review shall be served upon the Attorney General who is entitled as of right to be heard in person or by counsel on the application. 1971, c. 48, s. 9 (4); 1972, c. 1, s. 9 (7).

**10.** When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall forthwith file in the court for use on the application, the record of the proceedings in which the decision was made. 1971, c. 48, s. 10.

Record to  
be filed in  
S.C.O.

**11.** Where not inconsistent with this Act, the rules of practice and procedure of the court apply to applications for judicial review and to appeals from final orders therein, and the Rules Committee established under the *Judicature Act* may amend such rules or make additional rules applicable thereto. 1971, c. 48, s. 11.

Rules of  
practice

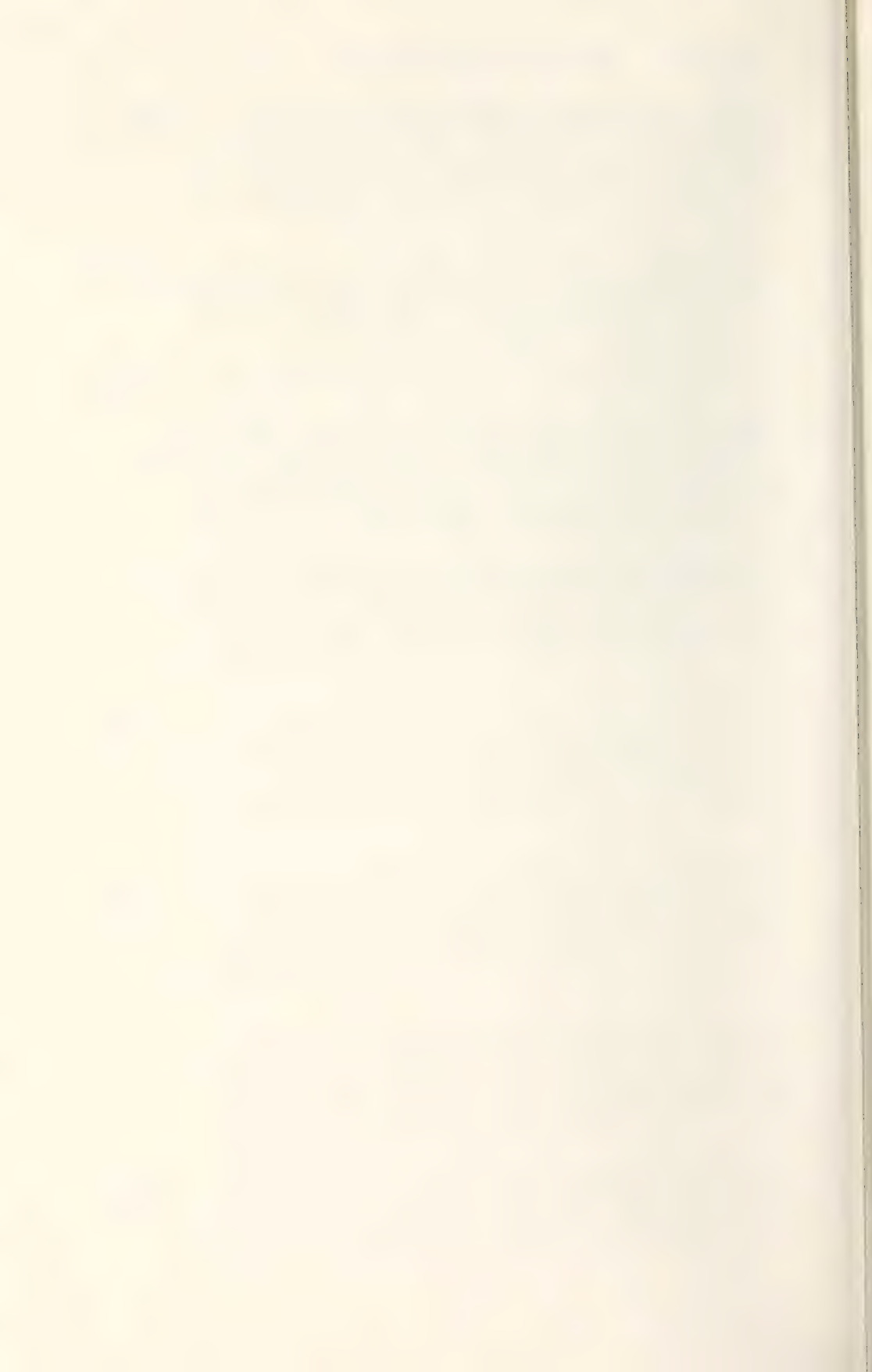
R.S.O. 1980,  
c. 223

**12.**—(1) Subject to subsection (2), where reference is made in any other Act or in any regulation, rule or by-law to any of the proceedings enumerated in subsection 2 (1), such reference shall, after the 16th day of April, 1972, be read and construed to include a reference to an application for judicial review.

References  
in other  
Acts, etc.

(2) Nothing in this Act affects proceedings under the *Habeas Corpus Act* or the issue of a writ of certiorari thereunder or proceedings pursuant thereto, but an application for judicial review may be brought in aid of an application for a writ of *habeas corpus*. 1971, c. 48, s. 12.

Proceedings  
under  
R.S.O. 1980,  
c. 193



## CHAPTER 225

## Junior Farmer Establishment Act

## 1. In this Act,

Interpre-  
tation

- (a) "borrower" means a person to whom a loan is made under this Act;
- (b) "Corporation" means The Ontario Junior Farmer Establishment Loan Corporation;
- (c) "directors" means the directors of the Corporation;
- (d) "economic farm unit" means one or more parcels of land and buildings capable of operation to produce sufficient income,
  - (i) to repay the money borrowed under this Act and interest thereon in accordance with the terms on which the loan is made,
  - (ii) to carry out and maintain the required improvements on the farm,
  - (iii) to replace live stock and farm equipment as required from time to time,
  - (iv) to pay the annual costs of operating the farm, and
  - (v) to support in a reasonable manner the junior farmer and his family, and any other person depending upon the farm for support;
- (e) "family farm" means a farm operated by a junior farmer and one or more persons related to him through blood relationship, marriage or adoption;
- (f) "farming" includes tillage of the soil, raising of live stock, dairying, apiculture and raising of fur-bearing animals;
- (g) "incorporated family farm" means a family farm where the junior farmer and other persons are incorporated as a corporation under the *Corporations Act* or the *Business Corporations Act*, and the junior farmer is an officer of such corporation;

R.S.O. 1980,  
cc. 95, 54

- (h) "junior farmer" means a person who complies with clauses 12 (1) (a) to (e);
- (i) "live stock" means cattle, sheep, swine, horses, goats or poultry;
- (j) "regulations" means regulations made under this Act;
- (k) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 229, s. 1; 1972, c. 3, s. 17 (1).

Corporation  
continued  
and object

**2.—**(1) The Ontario Junior Farmer Establishment Loan Corporation is continued and has as its object the making of loans to junior farmers and owners of,

- (a) family farms and incorporated family farms where one of the family members is a junior farmer; and
- (b) farms operated as partnerships where one of the partners is a junior farmer,

in the establishment, development and operation of their farms.

Membership

(2) The Corporation shall continue to be composed of three members who shall hold office as members during the pleasure of the Lieutenant Governor in Council and who shall be such officers in the public service of Ontario as the Lieutenant Governor in Council from time to time appoints.

Board of  
directors

(3) The three members for the time being of the Corporation shall form and be its board of directors and the Lieutenant Governor in Council shall designate one of them as chairman and one of them as vice-chairman of the board.

Manage-  
ment

(4) Subject to the regulations, the affairs of the Corporation shall be under the management and control of the board of directors and, in the absence of the chairman or if at any time that office is vacant, the vice-chairman has all the powers and shall perform the duties of the chairman.

Quorum

(5) Two directors constitute a quorum at meetings of the board of directors. R.S.O. 1970, c. 229, s. 2.

Borrowing  
powers

**3.—**(1) Subject to the approval of the Lieutenant Governor in Council, the Corporation may from time to time borrow or raise by way of loan such sums of money as the Corporation considers requisite for its purposes in any one or more, or partly in one and partly in another, of the following ways:

1. By the issue and sale of debentures, bills or notes of the Corporation in such form or forms, in such denomination or denominations, bearing interest at such rate or rates and payable as to principal and interest at such time or times, in such currency or currencies and at such place or places as the Corporation determines.
2. By temporary loan or loans from any chartered bank or banks or from any person either by way of bank overdraft or loan or in any other manner whatsoever as the Corporation determines.

(2) The purposes of the Corporation shall, without limiting the generality thereof, include, <sup>Purposes of Corporation</sup>

- (a) the carrying out of the object of the Corporation mentioned in section 2;
- (b) the payment, refunding or renewal from time to time of the whole or any part of any sum or sums of money raised by way of loan or of any securities issued by the Corporation;
- (c) the repayment in whole or in part of any advances made by Ontario to the Corporation or of any securities of the Corporation issued and delivered to the Treasurer in respect of any advances; and
- (d) the payment of the whole or any part of any obligation, liability or indebtedness of the Corporation.

(3) Subject to the approval of the Lieutenant Governor in Council, the Corporation may sell any debentures, bills or notes of the Corporation either at, or at less or more than, the par value thereof and may charge, pledge or otherwise deal with any such debentures, bills or notes as collateral security. <sup>Sale, etc., of Corporation's securities</sup>

(4) A recital or declaration in a resolution or minute of the Corporation authorizing the issue and sale of debentures, bills or notes of the Corporation to the effect that it is necessary to issue and sell such debentures, bills or notes for the purposes of the Corporation in the amount authorized is conclusive evidence to that effect. <sup>Authorization</sup>

(5) Debentures, bills or notes of the Corporation shall be sealed with the seal of the Corporation and may be signed by the chairman or vice-chairman of the Corporation and by the secretary or other officer of the Corporation, and any <sup>Sealing, signing, etc.</sup>

interest coupon that may be attached to any debenture, bill or note of the Corporation may be signed by the secretary or other officer of the Corporation.

Mechanical  
reproduction  
of seal and  
signature  
authorized

(6) The seal of the Corporation may be engraved, lithographed, printed or otherwise mechanically reproduced on any debenture, bill or note and any signature upon any debenture, bill or note and upon any coupon may be engraved, lithographed, printed or otherwise mechanically reproduced, and the seal of the Corporation when so reproduced has the same force and effect as if manually affixed, and any such signature is for all purposes valid and binding upon the Corporation notwithstanding that any person whose signature is so reproduced has ceased to hold office. R.S.O. 1970, c. 229, s. 3.

Securities  
of  
Corporation  
may be made  
redeemable  
in advance

4. A debenture, bill or note of the Corporation may be made redeemable in advance of maturity at such time or times, at such price or prices and on such terms and conditions as the Corporation determines at the time of the issue thereof. R.S.O. 1970, c. 229, s. 4.

Lost  
debentures

5. Where a debenture, bill or note of the Corporation is defaced, lost or destroyed, the board of directors may provide for its replacement on such terms as to evidence and as to indemnity as the board requires. R.S.O. 1970, c. 229, s. 5.

Guarantee  
of payment  
by Province  
of Ontario

6.—(1) The Lieutenant Governor in Council may authorize the Treasurer to guarantee payment by the Province of Ontario of any debentures, bills or notes issued by or of any temporary loan made to the Corporation under the authority of this Act.

Form of  
guaranty

(2) The form of guaranty and the manner of execution shall be determined by the Lieutenant Governor in Council.

Validity  
of guaranty

(3) Every guaranty given or purporting to be given under the authority of this section is binding upon the Province of Ontario and is not open to question upon any ground whatsoever.

Guaranteed  
debentures,  
etc., to be  
indefeasible

(4) A debenture, bill or note issued by or temporary loan made to the Corporation, payment whereof is guaranteed by the Province of Ontario under this section, is valid and binding upon the Corporation, its successors and assigns according to its terms, and the validity of any debenture, bill or note or temporary loan so guaranteed is not open to question on any ground whatsoever. R.S.O. 1970, c. 229, s. 6.

**7.** Notwithstanding anything in any other Act, debentures<sup>Trustees, etc., investments in debentures</sup> issued by the Corporation are at all times a lawful investment for municipal, school and trust funds. R.S.O. 1970, c. 229, s. 7.

**8.** The books and accounts of the Corporation shall be<sup>Audit</sup> audited annually by the Provincial Auditor or such other auditor as the Lieutenant Governor in Council designates, and such auditor shall make an annual report of the audit to the Treasurer, and the Treasurer shall table the report in the Assembly if it is in session or, if it is not, then at the next ensuing session. R.S.O. 1970, c. 229, s. 8.

**9.** The Corporation shall make an annual report in writing<sup>Annual report</sup> to the Treasurer showing in detail the number and amount of loans made by it during the last preceding fiscal year, and containing such other particulars as the Treasurer requires, and the Treasurer shall table the report in the Assembly if it is in session or, if it is not, then at the next ensuing session. R.S.O. 1970, c. 229, s. 9.

**10.** The Corporation, with the approval of the Lieutenant<sup>Committees</sup> Governor in Council, may appoint committees, each of which shall be composed of two or more persons, one of whom is or has been a practical farmer, to consider and report to the Corporation upon applications and upon problems that may arise in connection with loans already made. R.S.O. 1970, c. 229, s. 10.

**11.** Out of the moneys at its disposal from time to time,<sup>Purposes of loans</sup> the Corporation may make loans for the following purposes and no other:

1. The acquisition of land for agricultural purposes.
2. The erection and improvement of farm houses and farm buildings.
3. To pay off charges existing against land at the time of acquisition by the borrower under a will or by descent.
4. To pay off encumbrances.
5. To consolidate outstanding liabilities incurred for productive agricultural purposes.
6. For the purpose of providing drainage.
7. To purchase live stock.

8. For such purposes relating to the establishment, development and operation of the borrower's farm as the Corporation approves. R.S.O. 1970, c. 229, s. 11.

Qualifica-  
tions of  
applicants  
for loans

**12.**—(1) An applicant for a loan under this Act may be required to appear in person before the board of directors of the Corporation or a committee and shall submit evidence to the satisfaction of the board or committee,

- (a) that he is of the full age of eighteen years and not more than thirty-five years of age on the day the application is received by the Corporation;
- (b) that he has been resident in Ontario for at least three years immediately preceding his application;
- (c) that he has had a minimum of three years experience in farming and has displayed the ability and capacity necessary to operate a farm;
- (d) that he is industrious and of good character; and
- (e) that he is actually farming, or intends to farm, on a full-time basis on the land upon the security of which the loan is applied for. R.S.O. 1970, c. 229, s. 12 (1); 1971, c. 98, s. 4, Sched., par. 15.

Applicant  
shall submit  
particulars  
of owner-  
ship, etc.

(2) Where the applicant for a loan under this Act applies in respect of a family farm or incorporated family farm, he shall submit with the application such particulars of the ownership and operation of the farm as the regulations prescribe. R.S.O. 1970, c. 229, s. 12 (2).

Valuator's  
report

**13.**—(1) Before making a loan under this Act, the Corporation shall obtain a report as to the value of the security offered by the applicant from a valuator appointed by the Lieutenant Governor in Council.

Mode of  
valuing

(2) The land and buildings shall be valued on the basis of their value for agricultural purposes.

Corporation  
shall refuse  
loan where  
land and  
buildings not  
economic  
farm unit

(3) Where the Corporation is of the opinion that the land and buildings upon which security is offered by the applicant for the loan do not constitute an economic farm unit, the Corporation shall refuse the loan.

Insurance

(4) The buildings upon the land shall be insured to their full insurable value or for such lesser amount as is acceptable to the Corporation.

(5) Where the Corporation receives insurance moneys as mortgagee, it may apply such insurance moneys on the mortgage debt or for rebuilding, reinstating or repairing the premises or for such other purposes as the Corporation considers proper. Insurance moneys

(6) Where the Corporation applies insurance moneys under subsection (4) for any purpose, the moneys paid by the Corporation shall not be deemed to be a subsequent advance under the mortgage. Idem R.S.O. 1970, c. 229, s. 13.

**14.** Where the Corporation is satisfied that the conditions of this Act and the regulations have been complied with, the Corporation may make a loan to the borrower to the extent of 80 per cent of the value of the security as shown by the valuator's report. Extent of loan R.S.O. 1970, c. 229, s. 14.

**15.—(1)** No loan shall exceed \$40,000. Limitation as to loan

(2) Every loan shall bear interest at the rate of 5 per cent per annum. rate of interest

(3) Every loan shall be secured by a first mortgage upon the lands farmed or to be farmed as indicated in the application for the loan. and security therefor

(4) A borrower shall be, Qualifications of borrower

(a) a junior farmer or the spouse of a junior farmer, or both of them;

(b) a partnership having as one of the partners a junior farmer;

(c) the owner of a family farm; or

(d) a corporation operating an incorporated family farm where the junior farmer holds shares or other evidence of ownership of assets of the corporation.

(5) Where any part of the lands offered as security for a loan is subject to an interest for the life of a person other than the borrower and, in the opinion of the Corporation, such life interest will not affect the farming operation of the lands by the borrower, the person holding the life interest may be joined in the mortgage as a mortgagor in respect of the life interest. Holder of life interest may be mortgagor R.S.O. 1970, c. 229, s. 15.

**16.** At the time of or subsequent to the making of a loan, the Corporation may accept as collateral security therefor a life insurance policy or an assignment thereof, a chattel Collateral security

mortgage, or any other security that the Corporation considers proper. R.S.O. 1970, c. 229, s. 16.

Loan, how  
repayable

17.—(1) Except as hereinafter provided, a loan made under this Act is repayable in annual instalments of principal and interest sufficient to discharge the debt at the end of such period as is agreed upon, but no loan shall be made for more than thirty years.

Annual  
instalments  
of principal  
and interest

(2) Instalments of principal and interest shall be equal and shall be payable annually not later than a date determined by the Corporation, but a payment of interest only on the moneys advanced may be required on a date before the first date on which principal and interest are payable.

Payments  
may be  
accelerated

(3) Payments on account of the loan, in addition to those provided for in the mortgage or agreement, may be made at any time.

Sale of  
property  
acquired  
by release  
of equity  
of  
redemption

(4) The Corporation may accept a release of the equity of redemption existing by virtue of a mortgage to it and may sell any property that it has thus acquired to any person at such price and upon such terms as it considers proper.

Consolida-  
tion of  
indebted-  
ness

(5) The Corporation may grant such extension of time for the payment of principal and interest to any borrower and to any purchaser under an agreement for sale as the Corporation considers advisable and may, at any time at its discretion, consolidate the total indebtedness owing by any mortgagor or purchaser to the Corporation, inclusive of accrued interest and moneys paid for taxes, insurance, fees and disbursements to the date of consolidation, and alter the provisions of the mortgage and the agreement for sale so that the consolidated indebtedness with interest may be repayable in annual instalments for the balance of the term of the mortgage and agreement for sale or for such longer term as the Corporation considers proper.

Increase  
in loans

(6) Where a loan has been made under this Act and the borrower applies for an increase in the loan upon the same security, the Corporation may, if it is satisfied that the conditions of this Act and the regulations have been complied with, make a new loan to the applicant to the extent of 80 per cent of the value of the security as shown by the valuator's report. R.S.O. 1970, c. 229, s. 17.

Mortgages,  
how made  
R.S.O. 1980,  
c. 474

18. Every mortgage made under this Act shall be made in accordance with the *Short Forms of Mortgages Act*, and may contain such further covenants, provisos and conditions as the Corporation considers proper, and the Corporation has

and may exercise all the rights, powers and remedies with respect to any mortgage made under this Act as a mortgagee has under the laws of Ontario. R.S.O. 1970, c. 229, s. 18.

**19.** It shall be a term of a mortgage taken as security for a loan under this Act that, at the option of the Corporation, the mortgage shall immediately become due and payable where, <sup>Sale of mortgaged land</sup>

- (a) the land or any part thereof is sold or otherwise disposed of;
- (b) an agreement is made for the sale of the land or any part thereof;
- (c) the junior farmer in respect of whose application the loan was made ceases to farm on a full-time basis on the land; or
- (d) in the case of a family farm or incorporated family farm or farm operated by a partnership, the junior farmer in respect of whose application the loan was made ceases to comply with the Act and the regulations. R.S.O. 1970, c. 229, s. 19.

**20.** It shall be a term of a mortgage that the operation of the farm in respect of which a loan is made shall be in accordance with sound farming practices and carried out with accurate records kept of the farm operation and, at the request of the Corporation, that the junior farmer participates in a farm management program. R.S.O. 1970, c. 229, s. 20. <sup>Term of mortgage</sup>

**21.** All notices, mortgages, discharges or other documents under this Act shall be prepared by the Corporation or by a person designated by the Corporation. R.S.O. 1970, c. 229, s. 21. <sup>Preparation of notices, mortgages, etc.</sup>

**22.** If at any time in the opinion of the board of directors of the Corporation any money advanced under this Act has not been or is not being applied for the purpose for which it was advanced, or is not being carefully and economically expended, or if the security depreciates in value, the Corporation may refuse to make any further advance and call in the whole amount then advanced and all interest thereon and declare the same to be immediately due and payable, whereupon the borrower shall at once repay the same with interest at the rate set forth in the mortgage, and in default of payment the Corporation has the like remedies for recovery of the same as if the time for repayment thereof had fully arrived. R.S.O. 1970, c. 229, s. 22. <sup>Where money misapplied</sup>

Corporation  
to secure  
reports  
as to con-  
ditions  
of securities

**23.** The Corporation from time to time shall secure reports as to the condition of any securities taken by it for loans under this Act and as to the progress and prospects of the borrowers, and for this purpose any governmental agency may co-operate with the Corporation by rendering assistance of an educational or other nature that appears calculated to facilitate the success of the borrower. R.S.O. 1970, c. 229, s. 23.

Sale of Cor-  
poration's  
securities  
to Province  
and  
provincial  
advances  
to  
Corporation  
authorized

**24.**—(1) The Lieutenant Governor in Council may authorize the Treasurer,

- (a) to purchase any debentures, bills or notes of the Corporation; and
- (b) to make advances to the Corporation in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient.

Idem

(2) The moneys required for the purposes of subsection (1) shall be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 229, s. 24.

Regulations

**25.** The Lieutenant Governor in Council may make regulations respecting,

- (a) the management, control and administration of the affairs of the Corporation;
- (b) the manner in which applications for loans are to be made and the form thereof;
- (c) the fees and expenses payable by applicants and borrowers under this Act;
- (d) the terms and conditions of loans;
- (e) the information to be furnished to the Corporation in respect of the ownership and operation of any farm;
- (f) the prescribing and use of forms;
- (g) the terms and conditions for the making of bank loans;
- (h) insurance on the life of a borrower;
- (i) any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 229, s. 25.

**26.** This Act shall be administered by the member of the Executive Council to whom it is assigned by the Lieutenant Governor in Council. R.S.O. 1970, c. 229, s. 26. <sup>Administration of Act</sup>

**27.** The cost of administration of this Act shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 229, s. 27. <sup>Cost of administration</sup>

**28.—(1)** The Lieutenant Governor in Council may, upon such terms as he considers proper, agree to guarantee and may guarantee payment of losses sustained by a chartered bank as a result of loans made to junior farmers for the establishment, development and operation of their farms, in an amount not to exceed 10 per cent of the aggregate principal amount of the bank loans, where, <sup>Guarantee of bank loans</sup>

- (a) the junior farmer has a loan from the Corporation;
- (b) the bank loan was made pursuant to an application by the borrower in the form prescribed by the Corporation, stating the purpose of the bank loan;
- (c) an officer of the bank certifies that he has scrutinized and checked the application for the bank loan with the care required of him by the bank in the conduct of its ordinary business;
- (d) the principal amount of the bank loan at the time of its making, together with the amount owing in respect of other bank loans guaranteed under this Act previously made to the borrower and disclosed in his application or of which the bank had knowledge,
  - (i) where the farm is owned by a junior farmer or his spouse, or both of them, or by a partnership, did not exceed the sum of \$5,000, or
  - (ii) where the farm is a family farm or an incorporated family farm, did not exceed the sum of \$10,000; and
- (e) the bank loan was repayable in full by the terms thereof in not more than ten years and the rate of interest charged by the bank on the loan did not exceed the current rates of interest.

(2) The form and manner of the guarantee shall be such as the Lieutenant Governor in Council approves, and the guarantee shall be signed by the Treasurer or such other officer or <sup>Form of guarantee</sup>

officers as are designated by the Lieutenant Governor in Council, and, upon being so signed, the Province of Ontario is liable for the payment of the loss thereon guaranteed according to the terms of the guarantee.

Payment of  
guarantee

(3) The Lieutenant Governor in Council may make arrangements for supplying the money necessary to fulfil the requirements of any guarantee and to advance the amount necessary for that purpose out of the public funds of the Province of Ontario.

Idem

(4) A claim for loss by a bank in respect of the amount guaranteed shall be made to the Treasurer not sooner than ninety days nor later than one year after the entire amount of the loan becomes due and payable. R.S.O. 1970, c. 229, s. 28.

## CHAPTER 226

## Juries Act

**1.** In this Act,Interpre-  
tation

- (a) "county" includes a district;
- (b) "county court" includes a district court;
- (c) "Director of Assessment" means the Executive Director of the Assessment Division of the Ministry of Revenue;
- (d) "regulations" means the regulations made under this Act. 1974, c. 63, s. 1.

## ELIGIBILITY

**2.** Subject to sections 3 and 4, every person who,Eligible  
jurors

- (a) resides in Ontario;
- (b) is a Canadian citizen; and
- (c) in the year preceding the year for which the jury is selected had attained the age of eighteen years or more,

is eligible and liable to serve as a juror on juries in the Supreme Court and in all courts of civil or criminal jurisdiction in the county in which he resides. 1974, c. 63, s. 2; 1980, c. 64, s. 1.

**3.—(1)** The following persons are ineligible to serve as jurors: Ineligible  
occupations

- 1. Every member of the Privy Council of Canada or the Executive Council of Ontario.
- 2. Every member of the Senate, the House of Commons of Canada or the Assembly.
- 3. Every judge and every justice of the peace.

4. Every barrister and solicitor and every student-at-law.
5. Every legally qualified medical practitioner and veterinary surgeon who is actively engaged in practice and every coroner.
6. Every person engaged in the enforcement of law including, without restricting the generality of the foregoing, sheriffs, wardens of any penitentiary, superintendents, jailers or keepers of prisons, correctional institutions or lockups, sheriff's officers and constables, police officers and constables, and officers of a court of justice.
7. The husband or wife of each person mentioned in paragraph 3, 4 or 6. 1974, c. 63, s. 3 (1); 1980, c. 64, s. 2.

Connection  
with court  
action at  
same sittings

(2) Every person who is under subpoena or is likely to be called as a witness in a civil or criminal proceeding or has an interest in an action is ineligible to serve as a juror at any sittings of a court at which such proceeding or action might be tried.

Previous  
service

(3) Every person who, at any time within three years preceding the year for which the jury roll is prepared, has received fees for service after selection from the roll prepared under this Act or any predecessor thereof is ineligible to serve as a juror in that year. 1974, c. 63, s. 3 (2, 3).

Ineligibility  
for personal  
reasons

4.—(1) A person is ineligible to serve as a juror who,

- (a) has a physical or mental disability that would seriously impair his ability to discharge the duties of a juror; or
- (b) has been convicted of an indictable offence, unless he has subsequently been granted a pardon. 1974, c. 63, s. 4; 1980, c. 64, s. 3 (1).

Ineligibility  
for blindness  
or age

(2) Every person is ineligible to serve as a juror, who,

- (a) in the year preceding the year for which the jury is selected had attained the age of sixty-nine years or more; or
- (b) is blind,

and has indicated on his return to the jury service notice that he does not wish to serve as a juror. 1980, c. 64, s. 3 (2).

## PREPARATION OF JURY ROLLS

5.—(1) The sheriff of a county shall on or before the 15th day of September in each year determine for the ensuing year for the county, Number of jurors on roll

- (a) the number of jurors that will be required for each sittings of,
  - (i) the Supreme Court,
  - (ii) the court of general sessions of the peace in the county, and
  - (iii) the county court in the county;
- (b) the number of persons that will be required for selection from the jury roll for the purposes of any other Act; and
- (c) the aggregate number of persons that will be so required.

(2) In a provisional judicial district, after the sheriff has determined the number of persons that will be required for service during the ensuing year, he shall fix the total number of persons that shall be selected from municipalities, and the total number that shall be selected from territory without municipal organization. Number of jurors in districts

(3) The sheriff shall forthwith upon making his determination under subsection (1) certify and transmit, Transmission of resolutions

- (a) to the Director of Assessment,
  - (i) a copy of the determination declaring the aggregate number of persons required for the jury roll in the county in the ensuing year, and
  - (ii) a statement of the numbers of jury service notices to be mailed to persons in the county;
- (b) to the office of the Registrar of the Supreme Court, a copy of the determination for the number of jurors under subclause (1) (a) (i); and
- (c) to the clerk of the county court in the county, copies of the determinations for the number of jurors under subclauses (1) (a) (ii) and (iii). 1974, c. 63, s. 5.

Jury service  
notices

6.—(1) The Director of Assessment shall in each year on or before the 31st day of October cause a jury service notice, together with a return to the jury service notice in the form prescribed by the regulations and a prepaid return envelope addressed to the sheriff of the county, to be mailed by first class mail to the number of persons in each county specified by the sheriff in his statement, and selected in the manner provided for in this section. 1974, c. 63, s. 6 (1).

Selection  
of persons  
notified

(2) The persons to whom jury service notices are mailed under this section shall be selected by the Director of Assessment at random from persons who, from information obtained at the most recent census of the inhabitants of the county under section 14 of the *Assessment Act*,

R.S.O. 1980,  
c. 31

(a) at the time of the census, resided in the county and were Canadian citizens; and

(b) in the year preceding the year for which the jury is selected, are of or will attain the age of eighteen years or more,

and the number of persons selected from each municipality in the county shall bear approximately the same proportion to the total number selected for the county as the total number of persons eligible for selection in the municipality bears to the total number eligible for selection in the county, as determined by such census. 1974, c. 63, s. 6 (2); 1980, c. 64, s. 4.

Application  
of subs. (2) to  
municipi-  
palities  
in districts

(3) In a provisional judicial district for the purposes of subsection (2), all the municipalities in the district shall together be treated in the same manner as a county from which the number of jurors required is the number fixed under subsection 5 (2) to be selected from municipalities.

Address for  
mailing

(4) The jury service notice to a person under this section shall be mailed to him at the address shown for him in the most recent census of the inhabitants of the county under section 14 of the *Assessment Act*.

Return to  
jury service  
notice

(5) Every person to whom a jury service notice is mailed in accordance with this section shall accurately and truthfully complete the return and shall mail it to the sheriff of the county within five days after receipt thereof.

When service  
deemed made

(6) For the purposes of subsection (5), the notice shall be deemed to have been received on the third day after the day of mailing unless the person to whom the notice is mailed

establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control did not receive the notice or order, or did not receive the notice or order until a later date.

(7) The Director of Assessment shall furnish to the sheriff of the county a list of persons in the county arranged alphabetically to whom jury service notices were mailed under this section forthwith after such mailing and the list received by the sheriff purporting to be certified by the Director of Assessment is, without proof of the office or signature of the Director of Assessment, receivable in evidence in any action or proceeding as *prima facie* proof of the mailing of jury service notices to the persons shown on the list. List of notices given

(8) In the selecting of persons for entry in the jury roll in a county or district in which an Indian reserve is situate, the sheriff shall select names of eligible persons inhabiting the reserve in the same manner as if the reserve were a municipality and, for the purpose, the sheriff may obtain the names of inhabitants of the reserve from any record available. Indian reserves  
1974, c. 63, s. 6 (3-8).

7. The sheriff shall in each year prepare a roll called the jury roll in the form prescribed by the regulations. Sheriff to prepare jury roll  
1974, c. 63, s. 7.

8.—(1) The sheriff shall open the returns to jury service notices received by him and shall cause the name, address, age and occupation of each person making such a return, who is shown by the return to be eligible for jury service, to be entered in the jury roll alphabetically arranged and numbered consecutively. Entry of names in jury roll  
1974, c. 63, s. 8 (1).

(2) Where the county or Supreme Court is designated in a county or district under section 130 of the *Judicature Act*, the jury roll prepared under subsection (1) shall be divided into two parts English and bilingual jury rolls and, R.S.O. 1980, c. 223

(a) in one part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand the English language; and

(b) in the other part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand both the English and the French languages. 1978, c. 27, s. 1.

Omission  
of names

(3) The sheriff may, with the written approval of the local judge of the High Court, omit the name from the roll where it appears such person will be unable to attend for jury duty.

Supple-  
mentary  
names

(4) The sheriff may request the Director of Assessment to mail such number of additional jury service notices and forms of returns to jury service notice as in the opinion of the sheriff are required.

Supplying  
of supple-  
mentary  
names

(5) Upon receipt of a request from the sheriff under subsection (4), the Director of Assessment shall forthwith carry out such request and for such purpose section 6 applies with necessary modifications with respect to the additional jury service notices requested by the sheriff to be mailed.

Selection  
from  
unorganized  
territory

(6) In a provisional judicial district, the sheriff shall select names of eligible persons who reside in the district outside territory with municipal organization in the numbers fixed under subsection 5 (2) and for the purpose may have recourse to the latest polling list prepared and certified for such territory, and to any assessment or collector's roll prepared for school purposes and may obtain names from any other record available. 1974, c. 63, s. 8 (2-5).

Certification  
of roll

**9.** As soon as he has completed the jury roll but not later than the 31st day of December in each year, the sheriff shall certify the roll to be the proper roll prepared as the law directs and shall deliver notice of the certification to the local judge of the High Court, but the judge may extend the time for certification for such reasons as he considers sufficient. 1974, c. 63, s. 9; 1975, c. 25, s. 1.

Extension  
of times

**10.** The Chief Justice of the High Court may, upon the request of the sheriff of a county, extend any times prescribed by this Act in connection with the preparation of the jury roll for the county to such date as he considers appropriate and may authorize the continued use of the latest jury roll until the dates so fixed. 1974, c. 63, s. 10.

Additions to  
roll by  
sheriff

**11.—(1)** Where there are no persons or not a sufficient number of persons on the proper jury roll, or where there is no jury roll for the year in existence, the sheriff may supply names of eligible jurors from the jury roll for the nearest preceding year for which there is a jury roll or certified copy thereof in existence.

Certifi-  
cation of  
additions  
by sheriff

(2) The names supplied to the jury roll under this section shall be entered thereon and certified by the sheriff. 1974, c. 63, s. 11.

## JURY PANELS

**12.**—(1) The judges of the Supreme Court, or one or more of them, for the holding of any sittings of the Supreme Court, and the judge of the county court, for the holding of any sittings of the county court or of the court of general sessions of the peace, may respectively issue precepts in the form prescribed by the regulations to the sheriff for the return of such number of jurors as the sheriff has determined as the number to be drafted and returned or such greater or lesser number as in their or his opinion is required.

Issuance  
of precepts

(2) The proper officer in the office of the Registrar of the Supreme Court at Toronto, shall procure the precepts for the return of panels of jurors required for the sittings of the Supreme Court, and transmit them to the sheriffs as soon as conveniently may be after the day has been appointed for the sittings for which the jurors are required. 1974, c. 63, s. 12.

Precepts to  
be sent to  
sheriffs

**13.**—(1) Where a judge of the Supreme Court considers it necessary that the jurors to form the panel for a sittings of the Supreme Court be summoned in more than one set, he may direct the sheriff to return such number of jurors in such number of sets on such day for each set as he thinks fit.

Two or  
more sets of  
jurors for  
Supreme  
Court

(2) The sheriff shall divide such jurors into as many sets as are directed, and shall in the summons to every juror specify at what time his attendance will be required.

Sheriff to  
divide jurors  
into sets

(3) Each set shall for all purposes be deemed a separate panel. 1974, c. 63, s. 13.

Each set a  
separate  
panel

**14.**—(1) The judge of the county court, if after the issue of the precept it appears to him expedient, may at any time before the day appointed for the sittings of the Supreme Court, by order under his hand and seal, and the judge assigned to hold the sittings or the presiding judge may, at any time before or during the sittings of such court, by order under his hand and seal, direct the sheriff to return an additional number of jurors.

Judge of  
county  
court may  
order  
additional  
jurors for  
Supreme  
Court  
sittings

(2) The judge of the county court, after the issue of the precept, at any time before or during the sittings of the county court or court of general sessions of the peace, by order under his hand and seal, may direct the sheriff to return an additional number of jurors.

Additional  
jurors

Duty of  
sheriff as to  
drafting  
additional  
number of  
jurors

(3) The sheriff, upon the receipt of any such order, shall forthwith draft such additional number of jurors in the manner provided by this Act, and shall add their names to the panel list, and shall forthwith thereafter summon them, and where there are not a sufficient number of jurors on the jury roll for the purpose of the additions, section 11 applies. 1974, c. 63, s. 14.

When same  
panels for  
general  
sessions and  
county  
courts

**15.** Where the same day is appointed for holding the court of general sessions of the peace and the sittings of the county court, the sheriff may return the same panel to the precepts for the panels of jurors. 1974, c. 63, s. 15.

How sheriffs  
to draft  
panels of  
jurors

**16.** Every sheriff to whom a precept for the return of jurors is directed shall, to such precept, return a panel list of the names of the jurors contained in the jury roll, whose names shall be drafted from such roll in the manner hereinafter mentioned. 1974, c. 63, s. 16.

Sheriff to  
draft panel

**17.** Upon receipt of the precept, the sheriff shall post up in his office written notice of the day, hour and place at which he will draft the panel of jurors, and he shall draft the panel by ballot from the jury roll in the presence of a justice of the peace who shall attend upon reasonable notice from the sheriff. 1974, c. 63, s. 17.

How sheriff  
to prepare a  
panel

**18.**—(1) Before proceeding to draft a panel of jurors from a jury roll, the sheriff shall prepare a proper title or heading for the list of jurors to be returned, to which he shall fix an appropriate number according as such panel is the first, second, third or subsequent panel drafted from such jury roll, and the title or heading shall set forth the number of jurors to be returned.

Ballots for  
drafting  
panel

(2) The sheriff shall then append to such title or heading a list of numbers from "1" forward to the number required, and shall prepare a set of ballots of uniform and convenient size containing the same number of ballots as there are numbers on the jury roll, allowing one number to each ballot, which number shall be printed or written on it, and he shall then proceed to draft the panel of jurors. 1974, c. 63, s. 18.

Drafting  
of panel

**19.**—(1) The sheriff shall draft the panel by drawing at random the ballots from a container in the presence of the justice of the peace.

Panel  
list

(2) The names of the persons so drafted, arranged alphabetically, with their places of residence and occupations shall then be transcribed by the sheriff, with a reference to

the number of each name on the jury roll, and each name shall be thereupon marked by him or by his deputy upon the jury roll, but the name of a person shall not be included on the panel list where the spouse of such person is on the list.

(3) The panel list so alphabetically arranged and numbered, with a short statement of the precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the sheriff, or his deputy and the justice of the peace, present at such drafting, shall then be recorded and attested by the signatures of the sheriff, or his deputy and the justice of the peace, and such panel list shall be retained in the custody of the sheriff. 1974, c. 63, s. 19. Idem

**20.** The sheriff shall, upon his return to the precept, annex thereto the panel list containing the names, and places of residence, and occupations of the persons so drafted, and shall transmit one copy thereof to the office of the Registrar of the Supreme Court at Toronto or to the clerk of the county court, as the case may be. 1974, c. 63, s. 20; 1975, c. 25, s. 2. Copies of panel to be transmitted

**21.**—(1) The sheriff shall summon every person drafted to serve on juries by sending to him by registered mail a notice in writing in the form prescribed by the regulations under the hand of the sheriff at least twenty-one days before the day upon which the person is to attend, but when the sheriff is directed to draft and summon additional jurors under this Act, such twenty-one days service is not necessary. 1974, c. 63, s. 21 (1). Jurors to be summoned 21 days before attendance required

(2) The sheriff may excuse any person summoned for a jury sittings on the ground, Excusing of jurors

(a) of illness; or

(b) that serving as a juror may cause serious hardships or loss to him or others,

but unless the local judge of the High Court directs otherwise and notwithstanding any other provision of this Act, such person shall be included in a panel to be returned for a sittings later in the year or, where there are not further sittings in that year, in a panel to be returned for a sittings in the year next following. 1980, c. 64, s. 5.

**22.** The jury roll and every list containing the names of the jury drafted for any panel shall be kept under lock and key by the sheriff and every officer mentioned in section 20 having a copy thereof, and except in so far as may be necessary in order to prepare the panel lists, and serve the jury summons, shall not be disclosed by the sheriff, Secrecy of jury roll and panel

his deputy, officer, clerk, or by any officer mentioned in section 17 or 20, or by any other person, until ten days before the sittings of the court for which the panel has been drafted, and during such period of ten days, the sheriff, or his deputy, and any officer mentioned in section 20 having a copy of the panel list shall permit the inspection at all reasonable hours of the jury roll and of the panel list or copy thereof in his custody by litigants or accused persons or their solicitors and shall furnish the litigants or accused persons or their solicitors, upon request and payment of a fee of \$2, with a copy of any such panel list. 1974, c. 63, s. 22.

Counter-  
mand where  
no jury  
cases

**23.**—(1) Where there is no business requiring the attendance of a jury at a sittings of a court in respect of which a precept has been issued,

- (a) the clerk of the court or local registrar, as the case may be, where the sittings is for the trial of actions; or
- (b) the Crown attorney, where the sittings is for the trial of criminal prosecutions,

shall, at least five clear days before the day upon which the sittings is to commence, give notice in writing to the sheriff in the form prescribed by the regulations that the attendance of the jurors is not required.

Postpone-  
ment of date  
for  
attendance  
of jurors

(2) Where the business of the court does not require the attendance of the jurors until a day after the day upon which the sittings is to commence, the appropriate officer determined under subsection (1) shall, at least five clear days before the day upon which the sittings is to commence, give notice in writing to the sheriff in the form prescribed by the regulations that the attendance of the jurors is not required until such later day as is specified in the notice. 1974, c. 63, s. 23 (1, 2).

Notice to  
jurors

(3) Subject to subsection (4), where, upon receipt of such notice it appears to the sheriff that the attendance of jurors is not required or not required until a later date, the sheriff shall forthwith by registered mail or otherwise, as he considers expedient, notify in the form prescribed by the regulations each person summoned to serve as a juror that his attendance at the sittings is not required or is not required until the day specified in the notice. 1975, c. 25, s. 3, *part*.

Sheriff must  
ascertain  
that there  
are no  
prisoners  
in custody

(4) In the case of a sittings of the Supreme Court for the trial of criminal matters and proceedings, or in the

case of a sittings of the court of general sessions of the peace, the sheriff shall not give the notice mentioned in subsection (3) unless he is satisfied that there is no prisoner in custody awaiting trial at the sittings. 1974, c. 63, s. 23 (5).

**24.**—(1) Where a judge of the Supreme Court considers it necessary, he may direct that the jurors summoned for a sitting of the Supreme Court be divided into two or more sets as he may direct, and each set shall for all purposes be deemed a separate panel. Division of Supreme Court panel

(2) Where the judge of a county court considers it necessary, he may direct that the jurors summoned for jury sittings of the county court or the court of general sessions of the peace, or both, be divided into two or more sets as he may direct, and each set shall for all purposes be deemed a separate panel. 1974, c. 63, s. 24. Division of county court panel

**25.**—(1) A person summoned for jury duty may be excused by a judge from service as a juror on the ground that service as a juror is incompatible with the beliefs or practices of a religion or religious order to which he belongs. Excusing of juror for religious reasons

(2) A person summoned for jury duty may be excused by a judge from attending the sittings on the ground, Excusing of jurors for illness or hardship

(a) of illness; or

(b) that serving as a juror may cause serious hardships or loss to him or others,

and the judge may excuse the person from all service as a juror, or the judge may direct that the service of a person excused be postponed and that notwithstanding any provision of this Act, he be included in a panel to be returned for a sittings later in that year or in a panel to be returned for a sittings in the year next following.

(3) A person summoned for jury service may be excused under subsection (1) or (2), Application for excusing

(a) before the day for attendance by the local judge of the High Court;

(b) on or after the day for attendance, by the judge presiding at the sittings,

and the application to be excused may be made to the sheriff. 1980, c. 64, s. 6.

Release of  
jurors  
before  
sittings

**26.**—(1) Where jurors are summoned for a jury sittings, a local judge of the High Court where the sittings are of the Supreme Court or a judge of the county court where the sittings are of the county court or court of general sessions of the peace may, at any time before the sittings, release from or postpone service of any number of jurors summoned for the sittings.

Release  
during  
sittings

(2) The judge presiding at the sittings may release from or postpone service of any number of jurors summoned for the sittings.

Transfer  
to another  
panel

(3) Jurors released from service at a sittings under this section may be resummoned by the sheriff for service at any other sittings, whether of the same or any other court, held concurrently with or immediately following the sittings from which they were released.

Constitution  
of panel

(4) Where jurors have been released from service or their service has been postponed under this section, the remaining jurors constitute the panel, and jurors recalled or resummoned under this section form part of the panel to which they are added. 1975, c. 25, s. 4.

Supreme  
Court may  
issue  
precepts as  
heretofore

**27.** Subject to this Act, the Supreme Court and the judges thereof have the same power and authority as heretofore in issuing any precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before the court, or for amending or enlarging the panel of jurors returned for the trial of any such issue, and the return to any precept, award or order shall be made in the manner heretofore used and accustomed, and the jurors shall, as heretofore, be returned from the body of the county, and shall be eligible according to this Act. 1974, c. 63, s. 27.

County  
courts

**28.** The provisions of this Act respecting the issue of precepts for the return of a general panel of jurors for the sittings of the Supreme Court, as well as for the execution and return of the precepts, with all things touching the same, shall be observed and followed in all particulars with respect to the sittings of courts of general sessions of the peace and of county courts. 1974, c. 63, s. 28.

#### ACTIONS TRIED BY JURY

When  
actions to  
be entered  
for trial

**29.** Subject, in the case of an action in the Supreme Court, to any order made by a judge of that court, and in the case of an action in the county court, to any order made by a judge of the

county court, actions to be tried by a jury, whether in the Supreme Court or the county court, shall be entered for trial not later than six clear days before the first day of the sittings. 1974, c. 63, s. 29.

#### DRAWING JURY AT TRIAL

**30.**—(1) The name of every person summoned to attend as a juror, with his place of residence, occupation, and number on the panel list shall be written distinctly by the sheriff on a card or paper, as nearly as may be of the form and size following, viz.: Empanelling jury at the trial

#### 15. DAVID BOOTH

OF LOT NO. 11, IN THE 7TH CON. OF ALBION

#### MERCHANT

and the names so written shall, under the direction of the sheriff, be put together in a container to be provided by him for that purpose, and he shall deliver it to the clerk of the court.

(2) Where an issue is brought on to be tried, or damages are to be assessed by a jury, the clerk shall, in open court, cause the container to be shaken so as sufficiently to mix the names, and shall then draw out six of the cards or papers, one after another, causing the container to be shaken after the drawing of each name, and if any juror whose name is so drawn does not appear or is challenged and set aside, then such further number until six jurors are drawn, who do appear, and who, after all just causes of challenge allowed, remain as fair and indifferent, and the first six jurors so drawn, appearing and approved as indifferent, their names being noted in the minute book of the clerk of the court, shall be sworn, and shall be the jury to try the issue or to assess the damages. How the clerk is to proceed to draw names

(3) The cards or papers containing the names of persons so drawn and sworn shall be kept apart until the jury has given in its verdict, and it has been recorded, or until the jury has been by consent of the parties, or by leave of the court, discharged, and shall then be returned to the container there to be kept with the other cards or papers remaining therein. 1974, c. 63, s. 30. Names drawn to be kept apart, etc.

**31.** A jury may be selected in accordance with section 30 at any time before the trial of an issue or assessment of damages Selection of juries in advance

directed by the judge presiding at the sittings and shall attend for service upon the summons of the sheriff. 1974, c. 63, s. 31.

Several causes may be tried in succession by the same jury

**32.** Notwithstanding sections 30 and 31, where no objection is made by a party, the court may try any issue or assess damages with the jury previously drawn to try any other issue, or to assess damages, without the cards or papers containing their names being returned to the container and redrawn, or may order any of the jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the court, to retire and may cause another name or other names to be drawn from the container, and shall try the issue or assess the damages with the residue of the original jury and the new jurors who appear and are approved as indifferent. 1974, c. 63, s. 32.

If a full jury does not appear a *tales* may

**33.—(1)** Where a full jury does not appear at a sittings of a court for civil matters, or where, after the appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, the court may command the sheriff to name and appoint so many of such other able persons of the county then present, or who can be found, as will make up a full jury, and the sheriff shall return such persons to serve on the jury.

Adding names of talesmen

**(2)** Where a full jury does not appear, the names of the persons so returned shall be added to the panel returned upon the precept. 1974, c. 63, s. 33.

How jury to be composed

**34.** The presiding judge before whom a civil case is or may be heard may, in his discretion on an application made by or on behalf of the parties or any of them or at his own instance, make an order for the jury to be composed of men only or of women only, as the case may require. 1974, c. 63, s. 34.

The sheriff to note on rolls names of jurors who do not serve

**35.** Immediately after the sittings of the Supreme Court and of the court of general sessions of the peace, and of the county court, the sheriff shall note on the jury roll from which the panel of jurors returned to the sittings was drafted opposite the names of the jurors, the non-attendance or default of every juror who has not attended until discharged by the court. 1974, c. 63, s. 35.

#### CHALLENGES

Lack of eligibility

**36.** If a person not eligible is drawn as a juror for the trial of an issue in any matter or proceeding, the want of eligibility is a good cause for challenge. 1974, c. 63, s. 36.

**37.** In any cause, the plaintiff or plaintiffs, on one side, and the defendant or defendants, on the other, may challenge peremptorily any four of the jurors drawn to serve on the trial, and such right of challenge extends to the Crown when a party. 1974, c. 63, s. 37. Peremptory challenges in civil cases

**38.** In a matter or proceeding to which a municipal corporation, other than a county, is a party, every ratepayer, and every officer or servant of the corporation is, for that reason, liable to challenge as a juror. 1974, c. 63, s. 38. Ratepayers, officers, etc., of municipality may be challenged

#### GENERAL

**39.**—(1) Such fees and allowances as are prescribed under the *Administration of Justice Act* shall be paid to, Fees payable to jurors and justices of the peace

(a) every juror attending a sitting of the Supreme Court or of the court of general sessions of the peace or of the county court; and R.S.O. 1980, c. 6

(b) the justice of the peace in attendance for each panel drafted under section 17.

(2) With every record entered for trial of issues or assessment of damages by a jury in the Supreme Court there shall be paid to the Registrar or the local registrar of the Supreme Court, as the case may be, such sum as is prescribed under the *Administration of Justice Act*, and the record shall not be entered unless such sum is first paid. 1974, c. 63, s. 39. Sums to be paid with record when entered for trial in jury cases

**40.**—(1) The clerk of the court or the sheriff or his officer shall, at the opening of the court and before any other business is proceeded with, call the names of the jurors, and the sheriff or his officer shall record those who are present or absent. List of jurors to be called

(2) The sheriff shall keep a record of the payment of fees to jurors for attending sittings of a court. 1974, c. 63, s. 40 (1, 2). Record of fees paid

(3) A juror is not entitled to fees or expenses in respect of days that he does not or is not required to attend. 1975, c. 25, s. 5. When fees payable

**41.** The Lieutenant Governor in Council may make regulations, Regulations

(a) prescribing any form required or permitted by this Act to be prescribed by the regulations;

- (b) prescribing the manner of keeping jury rolls and lists of jury panels and records thereof and requiring and prescribing the form of the certification or authentication of entries therein. 1974, c. 63, s. 41.

## Offences

**42.—(1)** Every person who,

- (a) wilfully makes or causes to be made any alteration in any roll or panel or in any certified copy thereof except in accordance with this Act;
- (b) falsely certifies any roll or panel; or
- (c) influences or attempts to influence the selection of persons for inclusion in or omission from any jury roll or panel, except in a proper procedure under this Act,

is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

## Idem

(2) Every sheriff or clerk of the peace, or clerk or registrar of a court who refuses to perform any duty imposed on him by this Act, is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1974, c. 63, s. 42 (1, 2).

## Idem

(3) Every person who is required to complete a return to a jury service notice and who,

- (a) without reasonable excuse fails to complete the return or mail it to the sheriff as required by subsection 6 (5); or
- (b) knowingly gives false or misleading information in the return,

is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 63, s. 42 (3); 1975, c. 25, s. 6.

Evidence of  
not mailing

(4) For the purposes of subsection (3), where the sheriff fails to receive a return to a jury service notice within five days from the date on which it was required by this Act to be mailed, such failure is *prima facie* proof that the person required to mail it to the sheriff failed to do so in the time required.

Certificate  
as evidence

(5) A statement as to the receipt or non-receipt of a return to a jury service notice purporting to be certified by the sheriff is, without proof of the appointment or signature of

the sheriff, receivable in evidence as *prima facie* proof of the facts stated therein in any prosecution under subsection (3). 1974, c. 63, s. 42 (4, 5).

**43.** Every person is in contempt of court who, without Contempt of court reasonable excuse,

- (a) having been duly summoned to attend on a jury, does not attend in pursuance of the summons, or being there called does not answer to his name; or
- (b) being a juror or talesman, after having been called, is present but does not appear, or after his appearance wilfully withdraws himself from the presence of the court; or
- (c) being a sheriff, wilfully empanels and returns to serve on a jury a person whose name has not been duly drawn upon the panel in the manner prescribed in this Act; or
- (d) being a registrar, clerk of the peace or other officer wilfully records the appearance of a person so summoned and returned who has not actually appeared. 1974, c. 63, s. 43.

**44.—(1)** Every person is in contempt of court who, being Idem, tampering with jurors interested in an action that is or is to be entered for trial or may be tried in the court, or being the solicitor, counsel, agent or emissary of such person, before or during the sittings or at any time after a juror on the jury panel for such court has been summoned knowingly, directly or indirectly, speaks to or consults with the juror respecting such action or any matter or thing relating thereto. 1974, c. 63, s. 44 (1).

(2) Where a solicitor or barrister or student-at-law is Barrister, solicitor or student to be disbarred or suspended guilty of such offence he may, in addition to any other penalty, be struck from the roll of solicitors or be disbarred or suspended from the practice of his profession for a limited time or his name may be erased from the list of the Law Society or removed therefrom for a limited time by the Supreme Court upon motion at the instance and in the name of the Attorney General. 1974, c. 63, s. 44 (2); 1975, c. 25, s. 7.

(3) This section does not apply where a juror is also a party Exception where juror is a party or witness to or a known witness or interested in the action or is otherwise ineligible as a juror in the action, nor to anything that may properly take place in the course of the trial or conduct of the action. 1974, c. 63, s. 44 (3).

Leave of  
absence  
from  
employment

**45.—(1)** Every employer shall grant to an employee who is summoned for jury service a leave of absence, with or without pay, sufficient for the purpose of the discharge of the employee's duties, and, upon the employee's return, the employer shall reinstate the employee to his position, or provide him with alternative work of a comparable nature at not less than his wages at the time his leave of absence began and without loss of seniority or benefits accrued to the commencement of his leave of absence.

Liability  
of  
employer  
for  
breach

(2) An employer who fails to comply with subsection (1) is liable to the employee for any loss occasioned by the breach of his obligation.

Penalty  
for  
reprisals

(3) Every employer who, directly or indirectly,

(a) threatens to cause or causes an employee loss of position, or employment; or

(b) threatens to impose or imposes on an employee any pecuniary or other penalty,

because of his response to a summons, or his service as a juror, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both. 1980, c. 64, s. 7.

Posting up  
copies of  
s. 127 (2, 3) of  
*Criminal Code*

**46.** The sheriff shall at the sittings of the Supreme Court or county court for trials by jury and the court of general sessions of the peace post up in the court room and jury rooms and in the general entrance hall of the court house printed copies in conspicuous type of subsections 127 (2) and (3) of the *Criminal Code* (Canada) and subsection 44 (1) of this Act. 1974, c. 63, s. 45.

R.S.C. 1970.  
c. C-34

Saving of  
former  
powers of  
court and  
judges  
except as  
altered

**47.** Nothing in this Act alters, abridges or affects any power or authority that any court or judge has, or any practice or form in regard to trials by jury, juries or jurors, except in those cases only where such power or authority, practice or form is repealed or altered, or is inconsistent with any of the provisions of this Act. 1974, c. 63, s. 46.

Omissions to  
observe this  
Act not to  
vitiate the  
verdict

**48.—(1)** The omission to observe any of the provisions of this Act respecting the eligibility, selection, balloting and distribution of jurors, the preparation of the jury roll or the drafting of panels from the jury roll is not a ground for impeaching or quashing a verdict or judgment in any action.

Panel  
deemed  
properly  
selected

(2) Subject to sections 36 and 38, a jury panel returned by the sheriff for the purposes of this Act shall be deemed to be properly selected for the purposes of the service of the jurors in any matter or proceeding. 1974, c. 63, s. 47.

## CHAPTER 227

## Justices of the Peace Act

1. Every judge of the Supreme Court of Canada, of the <sup>Justices of the peace</sup> Federal Court of Canada, of the Supreme Court of Ontario and every judge of a county or district court is *ex officio* a justice of the peace for every part of Ontario and as such has power to do alone whatever is authorized to be done by two or more justices of the peace. R.S.O. 1970, c. 231, s. 1.

2.—(1) Subject to subsection (2), the Lieutenant Governor <sup>Appointment</sup> by commission under the Great Seal pursuant to an order in council may appoint justices of the peace in and for Ontario or any part thereof. R.S.O. 1970, c. 231, s. 2 (1).

(2) A person, other than a barrister or solicitor, desirous of being appointed a justice of the peace shall be examined <sup>Examination as to qualifications</sup> in regard to his qualifications for the office by a provincial judge of the provincial courts (criminal division) of the county or district in which he resides, or by such other person as is appointed in that behalf by the Lieutenant Governor in Council, and no such person shall be appointed a justice of the peace without a certificate from such judge or other person that he has examined the applicant and finds him qualified for the office and that in his opinion a justice of the peace is needed for the public convenience in matters pertaining to the administration of justice. R.S.O. 1970, c. 231, s. 2 (2); 1973, c. 149, s. 1.

3. All former general commissions of the peace are void <sup>Effect of new general commission</sup> upon the issue of a new general commission of the peace, but nothing in this Act prevents the reappointment of any justice of the peace named in a former commission if the Lieutenant Governor in Council thinks fit, and the issue of a supplementary commission of the peace does not operate as a revocation of a general commission. R.S.O. 1970, c. 231, s. 3.

4.—(1) A justice of the peace, before acting, shall take <sup>Oaths</sup> the following oath:

I, A.B., of the.....of.....  
in the County (or District) of.....do swear  
that I will well and truly serve Her Majesty Queen Elizabeth  
(or the reigning Sovereign for the time being) in the office of justice of  
the peace, and I will do right to all manner of people according to law,  
without fear or favour, affection or ill will. So help me God.

A.B.

Sworn before me, etc.

R.S.O. 1980,  
c. 415

and also the oath of allegiance as required by the *Public Officers Act*.

Filing  
oaths

(2) The oath of office and oath of allegiance shall be transmitted forthwith to the Inspector of Legal Offices and shall be filed in his office. R.S.O. 1970, c. 231, s. 4.

Power to  
take  
oaths

R.S.O. 1980,  
c. 75

5. A justice of the peace has the same power to administer oaths, affirmations and declarations as a commissioner appointed under the *Commissioners for taking Affidavits Act*. R.S.O. 1970, c. 231, s. 5.

Duties  
assigned by  
chief judges

6.—(1) A justice of the peace acting within his territorial jurisdiction may exercise those powers and perform those duties conferred or imposed upon a justice of the peace by an Act of the Legislature or of the Parliament of Canada or by a municipal by-law when so directed by the chief judge of the provincial courts (criminal division) or the chief judge of the provincial courts (family division), or by a provincial judge designated by either of them.

Direction  
and  
supervision

(2) Subject to subsection (3), the chief judge of the provincial courts (criminal division) or a provincial judge designated by him shall have general direction and supervision over the duties and sittings of justices of the peace.

Idem

(3) The chief judge of the provincial courts (family division) or a provincial judge designated by him shall have general direction and supervision over the duties and sittings of justices of the peace in respect of matters pertaining to the business of the provincial court (family division). 1973, c. 149, s. 2, *part*.

Fees

7.—(1) Subject to subsections (2) and (3), justices of the peace shall be paid such fees, allowances and expenses as are prescribed under the *Administration of Justice Act*.

R.S.O. 1980,  
c. 6

Disposition  
of fees

(2) The Lieutenant Governor in Council may authorize the payment of a salary to a justice of the peace appointed for Ontario or any part thereof and fix the amount of such salary.

(3) Where a justice of the peace is paid a salary under subsection (2), subsection (1) does not apply in respect of fees payable by Ontario and the justice of the peace shall pay all other fees received by him over to the Treasurer of Ontario. 1971, c. 6, s. 1, *part*.

8.—(1) There shall be a Justices of the Peace Review Council composed of, Idem  
Justices  
of the Peace  
Review  
Council

- (a) the chief judge of the provincial courts (criminal division);
- (b) the chief judge of the provincial courts (family division); and
- (c) the senior provincial judge for the county or district concerned in the matter being considered by the Council.

(2) The Attorney General may designate a provincial judge in a county or district to act as a member of the Justices of the Peace Review Council in the absence of the senior provincial judge in the county or district. Substitution  
in absence of  
senior judge

(3) The functions of the Justices of the Peace Review Council are, Functions  
of Council

- (a) to review the conduct of and performance of duties by justices of the peace in the county or district;
- (b) to receive complaints respecting the misbehaviour of or neglect of duty by justices of the peace in the county or district or their inability to perform their duties;
- (c) to take such action to investigate complaints as the Council considers advisable including the review thereof with the justice of the peace where appropriate, and after giving the justice of the peace an opportunity to be heard, to make such recommendations to the Attorney General with respect thereto as it sees fit.

(4) Where an investigation of a complaint is undertaken under clause (3) (c), the chief judge of the provincial courts (criminal division) or the chief judge of the provincial courts (family division) may suspend the justice of the peace from the performance of his duties until the Attorney General otherwise directs. Suspension  
from duties

Advising  
Attorney  
General

(5) The proceedings of the Justices of the Peace Review Council shall not be public, but it may inform and advise the Attorney General respecting matters that it has investigated or reviewed.

Powers

R.S.O. 1980,  
c. 411

(6) For the purposes of an investigation under this section, the Justices of the Peace Review Council has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Protection  
from  
liability

(7) No action or other proceeding for damages shall be instituted against the Justices of the Peace Review Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty. 1973, c. 149, s. 3.

R.S.O. 1980,  
c. 228  
does not  
apply

9. The *Labour Relations Act* does not apply to full-time justices of the peace. R.S.O. 1970, c. 231, s. 10.





